

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

Submitted to the 79th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas

2005

1 the time of incorporation, consist only of
2 lawful money of the United States, or bonds
3 of the United States, or of this state, or
4 of any county or incorporated municipality
5 thereof, or government insured mortgage
6 loans which are otherwise authorized by
7 this Chapter, and shall not include any real
8 estate; provided, however, that fifty per
9 cent (50%) of the minimum capital may be
10 invested in first mortgage real estate
11 loans; and the minimum capital of a company
12 hereafter organized under said Article 3.02
13 and the minimum free surplus of a company
14 hereafter organized under said Article
15 11.01 at all times shall be maintained in
16 cash or in the same classes of investments.
17 After the granting of charter the surplus in
18 excess of such One Hundred Thousand Dollars
19 (\$100,000) may be invested as otherwise
20 provided in this Code for Stock Companies.

21 CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION

22 INSURANCE COMPANIES

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27 CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION

28 INSURANCE COMPANIES

29 Revised Law

30 Sec. 426.001. RESERVES REQUIRED. A workers' compensation

31 insurance company engaged in business in this state shall maintain

32 reserves in an amount estimated in the aggregate to provide for the

33 payment of all losses and claims incurred, whether reported or

34 unreported. The company may not maintain reserves in an amount that

35 is greater than reasonably necessary for that purpose. (V.T.I.C.

36 Art. 5.61, Sec. (a) (part).)

37 Source Law

38 Art. 5.61. (a) Each workers' compensation

39 insurer transacting business in this state shall

40 maintain reserves in an amount estimated in the

41 aggregate to provide for the payment of all losses and

42 claims incurred, whether reported or unreported, but

43 not in an amount greater than reasonably required for

44 those purposes. . . .

45 Revisor's Note

46 V.T.I.C. Article 5.61 refers to a "workers'

47 compensation insurer." Throughout this chapter, the

1 revised law substitutes "insurance company" for
2 "insurer" for consistency with the terminology used in
3 the Labor Code with respect to workers' compensation
4 insurance.

5 Revised Law

6 Sec. 426.002. COMPUTATION OF RESERVES. Reserves required
7 by Section 426.001 must be computed in accordance with any rules
8 adopted by the commissioner to adequately protect insureds, secure
9 the solvency of the workers' compensation insurance company, and
10 prevent unreasonably large reserves. (V.T.I.C. Art. 5.61, Sec. (a)
11 (part).)

12 Source Law

13 (a) . . . The reserves shall be computed in
14 accordance with any rules adopted by the commissioner
15 for the purpose of adequately protecting the insureds,
16 securing the solvency of the insurer, and preventing
17 unreasonably large reserves.

18 Revised Law

19 Sec. 426.003. MAINTENANCE OF RESERVES; NOTICE OF
20 NONCOMPLIANCE. (a) If a workers' compensation insurance
21 company's reserves are determined under this chapter to be:

22 (1) inadequate, the commissioner shall notify the
23 company and require the company to establish and maintain
24 reasonable additional reserves; or

25 (2) unreasonably large, the commissioner shall notify
26 the company and require the company to reduce the amount of reserves
27 to a reasonable amount.

28 (b) Not later than the 60th day after the date of
29 notification of noncompliance under Subsection (a), the company
30 shall:

31 (1) restore compliance as required by Subsection (a);
32 and

33 (2) file a statement of restored compliance,
34 accompanied by any documentation required by the commissioner.
35 (V.T.I.C. Art. 5.61, Secs. (b), (c).)

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Source Law

(b) If the reserves are determined to be inadequate, the commissioner shall notify the insurer and require the insurer to establish and maintain reasonable additional reserves. If the reserves are determined to be unreasonably large, the commissioner shall notify the insurer and require the insurer to reduce its reserves to a reasonable amount.

(c) Not later than the 60th day after the date of the notification by the commissioner that its reserves have been determined not to be in compliance with the requirements of this article, the insurer shall restore compliance and file a statement of restored compliance, together with such documentation as the commissioner may require.

CHAPTER 427. SUBORDINATED INDEBTEDNESS

SUBCHAPTER A. GENERAL PROVISIONS

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CHAPTER 427. SUBORDINATED INDEBTEDNESS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 427.001. APPLICABILITY OF CHAPTER. This chapter applies to an insurer or health maintenance organization as defined by Section 401.001. (V.T.I.C. Art. 1.39, Sec. (a).)

Source Law

Art. 1.39. (a) This article applies to an insurer as that term is defined by Article 1.15A of this code.

Revisor's Note

Section (a), V.T.I.C. Article 1.39, refers to an insurer "as that term is defined by Article 1.15A" of the Insurance Code. Section 3(5), V.T.I.C. Article 1.15A, revised in this code as Section 401.001,

1 defines "insurer" to mean an insurer authorized to do
2 business under the law of this state, including, among
3 certain listed entities, "health maintenance
4 organizations." For accuracy, Section 401.001 omits
5 "health maintenance organization" from the listed
6 entities and substitutes a separate definition of that
7 term, because a "health maintenance organization" is
8 not a traditional insurer. Consequently, the revised
9 law refers to both an insurer and a health maintenance
10 organization as defined by Section 401.001, and
11 similar changes are made throughout this chapter.

12 Revised Law

13 Sec. 427.002. RULES. The commissioner shall adopt rules
14 necessary to implement this chapter. (V.T.I.C. Art. 1.39, Sec.
15 (f).)

16 Source Law

17 (f) The commissioner shall adopt rules as
18 necessary to implement this article.

19 [Sections 427.003-427.050 reserved for expansion]

20 SUBCHAPTER B. LOAN, ADVANCE, AND OTHER INDEBTEDNESS

21 Revised Law

22 Sec. 427.051. LOAN OR ADVANCE PERMITTED. An insurer or
23 health maintenance organization may obtain a loan or an advance,
24 repayable with interest, of:

- 25 (1) cash;
- 26 (2) cash equivalents; or
- 27 (3) other assets that have a readily determinable
28 value and are satisfactory to the commissioner. (V.T.I.C.
29 Art. 1.39, Sec. (b) (part).)

30 Source Law

31 (b) An insurer may obtain a loan or an advance of
32 cash, cash equivalents, or other assets that have a
33 readily determinable value and are satisfactory to the
34 commissioner, repayable with interest, and

35 Revised Law

36 Sec. 427.052. SUBORDINATED LIABILITY PERMITTED. (a) An

1 insurer or health maintenance organization may assume a
2 subordinated liability for repayment of a loan or advance described
3 by Section 427.051 and payment of interest on the loan or advance if
4 the insurer or health maintenance organization and the creditor
5 execute a written agreement stating that the creditor may be paid
6 only out of that portion of the insurer's or health maintenance
7 organization's surplus that exceeds the greater of:

8 (1) a minimum surplus amount set in the agreement; or

9 (2) a minimum surplus amount of \$500,000.

10 (b) The department or commissioner may not require the
11 agreement to provide a minimum surplus amount that is different
12 from the amount described by this section. (V.T.I.C. Art. 1.39,
13 Sec. (b) (part).)

14 Source Law

15 (b) An insurer [may obtain a loan or an advance
16 of cash, cash equivalents, or other assets that have a
17 readily determinable value and are satisfactory to the
18 commissioner, repayable with interest, and] may assume
19 a subordinated liability for repayment of the advance
20 and payment of interest on the advance if the insurer
21 and creditor execute a written agreement stating that
22 the creditor may be paid only out of that portion of
23 the insurer's surplus that exceeds the greater of a
24 minimum surplus stated and fixed in the agreement or a
25 minimum surplus of \$500,000 for that insurer. The
26 department or the commissioner may not require the
27 agreement to provide another minimum surplus amount.

28 Revisor's Note

29 (1) Section (b), V.T.I.C. Article 1.39,
30 provides that an insurer or health maintenance
31 organization may obtain "a loan or an advance" and
32 subsequently authorizes the insurer or health
33 maintenance organization to assume a subordinated
34 liability for repayment of "the advance" and payment
35 of interest on "the advance." The revised law
36 substitutes a reference to a "loan or advance" for
37 references to "the advance" because, in context, the
38 authorization to assume a subordinated liability and
39 repayment of interest and other language throughout
40 the article clearly applies to both a loan and an

1 advance. Similar changes are made throughout this
2 chapter.

3 (2) Section (b), V.T.I.C. Article 1.39, refers
4 to a minimum surplus amount that is "stated and fixed"
5 in an agreement. The revised law substitutes "set" for
6 the quoted language because, in context, "set" is
7 synonymous with "fixed," and an amount that is "set" in
8 the agreement is necessarily "stated."

9 Revised Law

10 Sec. 427.053. APPROVAL OF AGREEMENT REQUIRED. (a) An
11 insurer or health maintenance organization must submit the written
12 agreement under Section 427.052 to the commissioner for approval of
13 the form and content of the agreement.

14 (b) The commissioner must approve or disapprove the
15 agreement not later than the 30th day after the date the insurer or
16 health maintenance organization submits the agreement. If the
17 commissioner fails to act as required by this subsection, the
18 agreement is considered approved.

19 (c) An insurer or health maintenance organization may
20 assume a subordinated liability only after the commissioner has
21 approved the agreement under this chapter or Subchapter C, Chapter
22 823. (V.T.I.C. Art. 1.39, Sec. (e) (part).)

23 Source Law

24 (e) An agreement entered into under Subsection
25 (b) of this article must be submitted to the
26 commissioner for approval as to form and content;
27 provided, however, that the commissioner must give his
28 decision of either approval or disapproval within 30
29 days after the written filing by the insurer, and his
30 failure to so act within such 30 days shall constitute
31 approval of the transaction. An insurer may not assume
32 a subordinated liability until the commissioner has
33 approved the agreement under either Section 4, Article
34 21.49-1, or this article. . . .

35 Revisor's Note

36 (1) Section (e), V.T.I.C. Article 1.39, refers
37 to the approval of the commissioner of insurance of a
38 "transaction." The revised law substitutes
39 "agreement" for "transaction" for consistency of

terminology throughout this chapter.

(2) Section (e), V.T.I.C. Article 1.39, refers to approval of an agreement under Section 4, V.T.I.C. Article 21.49-1. Section 4, V.T.I.C. Article 21.49-1, was revised as Sections 823.008 and 823.053(e) of this code and Subchapter C, Chapter 823, of this code. The revised law substitutes a reference to Subchapter C, Chapter 823, of this code because it is clear from the context that is the relevant part of Section 4, V.T.I.C. Article 21.49-1, to which this section refers.

Revised Law

Sec. 427.054. LIABILITY. (a) A loan or advance made under this chapter, including any interest accruing on the loan or advance, is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent provided by the terms of the loan or advance agreement.

(b) Notwithstanding Subsection (a), if the loan or advance agreement provides for a sinking fund out of which the loan or advance is to be repaid, the loan or advance is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent of the amounts accumulated and held in the sinking fund. By agreement of the parties, any portion of the amounts accumulated in the sinking fund may be returned to the surplus of the insurer or health maintenance organization at any time and any amount returned may not be a legal liability of the insurer or health maintenance organization or a liability with respect to the insurer's or health maintenance organization's financial statement. (V.T.I.C. Art. 1.39, Secs. (c), (d).)

Source Law

(c) A loan or advance made under this article,

1 and any interest accruing on the loan or advance, is a
2 legal liability and financial statement liability of
3 the insurer only to the extent provided by the terms
4 and conditions of the loan or advance agreement, and
5 the loan or advance may not otherwise be a legal
6 liability or financial statement liability of the
7 insurer.

8 (d) If the loan or advance agreement provides
9 for a sinking fund out of which the loan or advance is
10 to be repaid, then the loan or advance shall be a legal
11 liability and financial statement liability of the
12 insurer only to the extent of those funds accumulated
13 and held in the sinking fund, and the loan or advance
14 may not otherwise be a legal liability or financial
15 statement liability of the insurer. By mutual
16 agreement of the parties to the agreement, any portion
17 of the accumulated funds in the sinking fund may be
18 returned to the surplus of the insurer at any time and
19 from time to time and thereafter may not be considered
20 as a legal liability or financial statement liability
21 of the insurer.

22 Revisor's Note

23 (1) Section (c), V.T.I.C. Article 1.39, refers
24 to "terms and conditions" of a loan or advance
25 agreement. The revised law omits "conditions" because
26 "conditions" is included within the meaning of
27 "terms."

28 (2) Sections (c) and (d), V.T.I.C. Article 1.39,
29 provide that certain loans or advances are a legal
30 liability or financial statement liability of an
31 insurer or health maintenance organization only to the
32 extent specified by the section, "and the loan or
33 advance may not otherwise be a legal liability or
34 financial statement liability of the insurer." The
35 revised law omits the quoted language as unnecessarily
36 repetitive.

37 (3) Section (d), V.T.I.C. Article 1.39, states
38 that certain funds may be returned to the surplus of an
39 insurer or health maintenance organization "at any
40 time and from time to time." The revised law omits the
41 reference to "from time to time" because "from time to
42 time" is included within the meaning of "at any time."

43 Revised Law

44 Sec. 427.055. PAYMENT OF PRINCIPAL OR INTEREST ON CERTAIN

1 LIABILITIES. (a) An insurer or health maintenance organization
2 may not pay principal or interest on a subordinated liability
3 assumed under Section 427.052 or Subchapter C, Chapter 823, on or
4 after September 1, 1995, unless:

5 (1) the payment complies with a schedule of payments
6 contained in the agreement approved by the commissioner in
7 accordance with Section 427.052 or Subchapter C, Chapter 823; or

8 (2) if the payment does not comply with the schedule of
9 payments contained in the agreement or the agreement does not
10 contain a payment schedule, the insurer or health maintenance
11 organization provides written notice to the commissioner not later
12 than the 15th day before the scheduled payment date.

13 (b) A loan, debenture, revenue bond, or advance agreement
14 issued to an insurer or health maintenance organization before
15 September 1, 1995, and any subsequent payment of principal or
16 interest on the indebtedness are governed by the law in effect on
17 the date of issuance. (V.T.I.C. Art. 1.39, Sec. (e) (part).)

18 Source Law

19 (e) . . . An insurer may not repay principal or
20 pay interest on a subordinated liability assumed under
21 either Section 4, Article 21.49-1, or this article on
22 or after September 1, 1995, unless either (i) such
23 payment or repayment complies with a specific schedule
24 of payments contained within the terms of the
25 previously approved agreement, or (ii) written notice
26 is provided to the commissioner at least 15 days before
27 the date scheduled for any payment or repayment if
28 either a schedule of payments is not contained within
29 the terms of the previously approved agreement, or
30 such payment or repayment does not comply with the
31 specific schedule of payments contained within the
32 terms of the previously approved agreement. A loan,
33 debenture, revenue bond, or advance agreement issued
34 before September 1, 1995, and any subsequent payment
35 of interest or repayment of principal are governed by
36 the law in effect on the date of issuance.

37 Revisor's Note

38 Section (e), V.T.I.C. Article 1.39, refers to a
39 subordinated liability assumed under Section 4,
40 V.T.I.C. Article 21.49-1. The revised law substitutes
41 a reference to Subchapter C, Chapter 823, of this code
42 for the reason stated in Revisor's Note (2) to Section

1 427.053.

2 [Chapters 428-440 reserved for expansion]

3 SUBTITLE C. DELINQUENT INSURERS

4 CHAPTER 441. SUPERVISION AND CONSERVATORSHIP

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9	CHAPTER 441. SUPERVISION AND CONSERVATORSHIP	
10	SUBCHAPTER A. GENERAL PROVISIONS	
11	<u>Revised Law</u>	
12	Sec. 441.001. FINDINGS AND PURPOSE. (a) An insurer	
13	delinquency, or the state's inability to properly proceed in a	
14	threatened delinquency, directly or indirectly affects other	
15	insurers by creating a lack of public confidence in insurance and	
16	insurers. Insurer delinquencies destroy public confidence in the	
17	state's ability to regulate insurers. The harmful results of	
18	insurer delinquencies, including those described by this	
19	subsection, are properly minimized by laws designed to protect and	
20	assist insureds, creditors, and owners.	
21	(b) Placing an insurer in receivership often destroys or	
22	diminishes, or is likely to destroy or diminish, the value of the	
23	insurer's assets, including:	
24	(1) the insurer's insurance account or in-force	
25	business;	
26	(2) the insurer as a going concern; and	
27	(3) the insurer's agency force.	
28	(c) The value of the assets described by Subsection (b)	
29	should be preserved if the circumstances of the insurer's financial	
30	condition warrant an attempt to rehabilitate or conserve the	
31	insurer and the rehabilitation or conservation is otherwise	
32	feasible.	
33	(d) It is a proper concern of this state and proper policy to	
34	attempt to correct or remedy insurer misconduct, ineptness, or	

1 misfortune.

2 (e) The purpose of this chapter is to:

3 (1) provide for the rehabilitation and conservation of
4 insurers by authorizing and requiring supervision and
5 conservatorship by the commissioner;

6 (2) authorize action to determine whether an attempt
7 should be made to rehabilitate and conserve an insurer;

8 (3) avoid, if possible and feasible, the necessity of
9 placing an insurer under temporary or permanent receivership;

10 (4) provide for the protection of an insurer's assets
11 pending determination of whether the insurer may be successfully
12 rehabilitated; and

13 (5) alleviate concerns regarding insurance and
14 insurers.

15 (f) Rehabilitation of an insurer might not be accomplished
16 in every case, but this chapter facilitates and directs an attempt
17 to rehabilitate an insurer without immediate resort to the harsher
18 remedy of receivership. If receivership becomes necessary, the
19 preliminary supervision and conservatorship may prevent a
20 dissipation of assets, which will benefit policyholders,
21 creditors, and owners.

22 (g) For the reasons stated by this section, the substance
23 and procedures of this chapter are the public policy of this state
24 and are necessary to the public welfare. That policy and welfare
25 require the availability of this chapter and the application of
26 this chapter if circumstances warrant.

27 (h) This chapter provides, in conjunction with other law, a
28 generally ordered sequence, and provides for review at each step,
29 of supervision, concurrent conservatorship and rehabilitation,
30 including reinsurance, and cessation of the conservatorship by
31 rehabilitation or by receivership and liquidation if at any time
32 that cessation is indicated or determined to be appropriate.

33 (V.T.I.C. Art. 21.28-A, Sec. 1 (part).)

1 any time or ultimately be indicated or determined,
2 cessation of the conservation by accomplishment of
3 rehabilitation or by receivership and liquidation.

4 Revisor's Note

5 (1) Section 1, V.T.I.C. Article 21.28-A,
6 describes the need for enacting Article 21.28-A and
7 refers to the "sense of the Legislature" that laws in
8 existence before the enactment of Article 21.28-A were
9 inadequate or inappropriate to remedy the financial
10 condition of, and that a void exists in the law with
11 respect to the rehabilitation of, certain insurers.
12 The revised law omits these provisions as executed.
13 The omitted law reads:

14 Art. 21.28-A

15 Sec. 1. It is the sense of the
16 Legislature that existing provisions and
17 conditions of law and the ordered
18 procedures of law are sometimes not
19 adequate, nor appropriate under all
20 circumstances, in respect of a need to
21 remedy the financial condition and the
22 management of certain insurers. Neither
23 are the laws adequate for the
24 rehabilitation of insurers who voluntarily
25 request rehabilitation. A void exists in
26 the laws with respect to those insurers most
27 susceptible to rehabilitation or the
28 regaining of solvency. . . .

29 (2) Section 1, V.T.I.C. Article 21.28-A,
30 contains findings made by the legislature in enacting
31 that article. The findings are introduced with
32 various phrases, including "[t]he Legislature finds,"
33 "[t]he Legislature declares," "[i]t is the purpose of
34 the Legislature," and "it is . . . the belief and
35 finding of the Legislature." The revised law omits
36 each of the references to findings being made "by the
37 legislature" as unnecessary. Because only the
38 legislature may enact statutes, it is implicit in the
39 revision of the substance of each of the findings that
40 the finding was made by the legislature.

41 (3) Section 1, V.T.I.C. Article 21.28-A,
42 describes the necessity and benefits of supervision

1 and conservatorship of an insurer before the insurer
2 is placed in receivership and provides that "the
3 commissioner is directed, in its discretion, to the
4 use of this authorization." The revised law omits the
5 quoted phrase as duplicative of other provisions
6 revised in this chapter that explicitly provide the
7 duties and authority of the commissioner of insurance
8 regarding insurer delinquencies.

9 (4) Section 1, V.T.I.C. Article 21.28-A, refers
10 to "the inappropriate as well as the appropriate"
11 concerns with respect to insurance and insurers. The
12 revised law omits as unnecessary the reference to the
13 descriptions of these concerns as "inappropriate" and
14 "appropriate."

15 (5) Section 1, V.T.I.C. Article 21.28-A, refers
16 to "concurrent conservation and rehabilitation." The
17 revised law substitutes "conservatorship" for
18 "conservation" for consistency with the terminology
19 used in this chapter.

20 (6) Section 1, V.T.I.C. Article 21.28-A, refers
21 to "at any time or ultimately." The revised law omits
22 the reference to "ultimately" because, in context,
23 "ultimately" is included within the meaning of "at any
24 time."

25 Revised Law

26 Sec. 441.002. DEFINITION. In this chapter, unless the
27 purposes of this chapter clearly require or the context clearly
28 indicates another meaning, "insurer" means a person, organization,
29 or company, regardless of whether the person or entity is
30 authorized or admitted, that engages in the business of insurance
31 or that acts as a principal or agent of a person, organization, or
32 company engaged in the business of insurance. The term includes a
33 stock insurance company, reciprocal or interinsurance exchange,
34 Lloyd's plan, fraternal benefit society, stipulated premium

1 company, title insurance company, and mutual insurance company of
2 any kind, including a statewide mutual assessment company, local
3 mutual aid association, burial association, county mutual
4 insurance company, and farm mutual insurance company. (V.T.I.C.
5 Art. 21.28-A, Secs. 2 (part), (a).)

6 Source Law

7 Sec. 2. As used in this Article, the following
8 words, terms and phrases . . . include the meanings,
9 significance or application described in this Section,
10 except as another meaning is clearly requisite from
11 the purposes or is otherwise clearly indicated by the
12 context.

13 (a) "Insurance Company" (used
14 interchangeably with "insurer") is any person,
15 organization, association or company, (authorized or
16 unauthorized, admitted or non-admitted) acting as an
17 insurer, or as principal or agent of an insurer,
18 including stock companies, reciprocals or
19 interinsurance exchanges, Lloyds associations,
20 fraternal benefit societies, stipulated premium
21 companies, title insurance companies, and mutual
22 companies of all kinds, including state-wide mutual
23 assessment corporations, local mutual aids, burial
24 associations, and county mutual insurance companies
25 and farm mutual insurance companies.

26 Revisor's Note

27 (1) Section 2, V.T.I.C. Article 21.28-A,
28 describes the manner in which the terms defined in that
29 section may appear in other parts of that article. The
30 revised law omits the description as unnecessary. The
31 omitted law reads:

32 Sec. 2. [As used in this Article, the
33 following words, terms and phrases] (in
34 single quotes in this Section of the Article
35 but not in quotes in other Sections)
36 [include the meanings, significance or
37 application described in this Section]
38

39 (2) Section 2(a), V.T.I.C. Article 21.28-A,
40 defines "insurance company" and provides that the term
41 is "used interchangeably with 'insurer.'" The revised
42 law uses the defined term "insurer" and substitutes
43 that term for "insurance company" in this section and
44 throughout this chapter because the terms have the
45 same meaning and the former term is more commonly used
46 in this code.

(3) Section 2(a), V.T.I.C. Article 21.28-A, refers to a "person, organization, association or company." The revised law omits as unnecessary the reference to "association" because, in context, that term is included within the meaning of "organization."

(4) Section 2(a), V.T.I.C. Article 21.28-A, refers to "Lloyds associations," "state-wide mutual assessment corporations," and "local mutual aids," meaning entities operating under Chapters 941, 881, and 886, respectively. The terms most frequently used to refer to those entities are "Lloyd's plan," "statewide mutual assessment company," and "local mutual aid association." For consistent use of terminology in this code, the revised law substitutes "Lloyd's plan," "statewide mutual assessment company," and "local mutual aid association" for "Lloyds associations," "state-wide mutual assessment corporations," and "local mutual aids," respectively.

Revised Law

Sec. 441.003. APPLICABILITY OF AND COMPLIANCE WITH CHAPTER. Compliance with this chapter is a condition of engaging in the business of insurance in this state. This chapter applies to, and is a consequence of, any other transaction with respect to an insurer or insurance. (V.T.I.C. Art. 21.28-A, Sec. 1 (part).)

Source Law

Sec. 1. . . . [Such policy and welfare requires the availability of this law and the application of this law whenever circumstances warrant; and] it is therefore a condition of doing an insurance business in this state; and it is made applicable and is a consequence of any other transactions in respect of an insurer or insurance. . . .

Revised Law

Sec. 441.004. ACTIONS OF COMMISSIONER. (a) In the event of an insurer's delinquency or suspected delinquency, the commissioner, in the commissioner's administrative discretion, may act under this chapter, another applicable law, or a combination of

1 this chapter and another applicable law.

2 (b) If the commissioner determines to act under this chapter
3 or is directed by a court to act under this chapter, the
4 commissioner shall comply with the requirements of this chapter.
5 (V.T.I.C. Art. 21.28-A, Secs. 10, 12(a) (part).)

6 Source Law

7 Sec. 10. (a) If the Commissioner determines to
8 act under authority of this Article, or is directed by
9 the State Board of Insurance or a court of competent
10 jurisdiction to act under this Article, the sequence
11 of his acts and proceedings shall be as set forth
12 herein. However, it is a purpose and substance of this
13 Article to authorize administrative discretion--to
14 allow the State Board of Insurance and the
15 Commissioner administrative discretion in the event of
16 insurance company delinquencies--and in furtherance
17 of that purpose, the Commissioner is hereby authorized
18 in respect of insurance company delinquencies or
19 suspected delinquencies to proceed and administer
20 either under this Article or under any other
21 applicable law, or under this law in conjunction with
22 other law, either as such law is now existing or as is
23 hereafter enacted, and it is so provided.

24 Sec. 12. (a) . . . Also authorized for use, in
25 conjunction with this Article, in delinquency
26 proceedings or threatened insolvencies of insurers,
27 are any other statutes or laws possible of application
28 with this Act or in the procedures of this Act, or in
29 augmentation of this Act whether or not directed as
30 applicable by such other statute; but

31 Revisor's Note

32 (1) Section 10, V.T.I.C. Article 21.28-A,
33 refers to the State Board of Insurance. Chapter 685,
34 Acts of the 73rd Legislature, Regular Session, 1993,
35 abolished the board and transferred its functions to
36 the commissioner of insurance and the Texas Department
37 of Insurance. Throughout this chapter, references to
38 the State Board of Insurance or "the board" have been
39 changed appropriately.

40 (2) Section 10, V.T.I.C. Article 21.28-A,
41 refers to a court "of competent jurisdiction." The
42 revised law omits the quoted language as unnecessary
43 in this section and in similar provisions throughout
44 this chapter because the general laws of civil
45 jurisdiction determine which courts have jurisdiction

1 over a matter. For example, see Sections
2 24.007-24.011, Government Code, for the general
3 jurisdiction of district courts.

4 (3) Section 10, V.T.I.C. Article 21.28-A,
5 provides that the commissioner of insurance may take
6 action under that article or other applicable law
7 "either as such law is now existing or as is hereafter
8 enacted." The revised law omits the quoted language as
9 unnecessary because any applicable law in effect at
10 the time of an action of the commissioner applies by
11 its own terms, and the commissioner may take the action
12 as authorized by that law.

13 (4) Section 12(a), V.T.I.C. Article 21.28-A,
14 provides that Section 14, V.T.I.C. Article 17.25, and
15 V.T.I.C. Articles 14.33 and 22.22 may be used in
16 conjunction with the law revised in this chapter. The
17 revised law omits the provision because the specified
18 laws were repealed by Chapter 1419, Acts of the 77th
19 Legislature, Regular Session, 2001, as being
20 completely subsumed and replaced by the enactment in
21 1967 of Article 21.28-A, revised in relevant part as
22 this chapter. The omitted law reads:

23 Sec. 12. (a) Other statutes
24 authorized for use and application in
25 conjunction with this Article are Section
26 14 of Article 17.25, and Articles 14.33 and
27 22.22 of the Insurance Code. . . .

28 Revised Law

29 Sec. 441.005. RULES; AUTHORITY FOR ADMINISTRATIVE ACTION.

30 (a) The commissioner may:

31 (1) adopt reasonable rules as necessary to implement
32 and supplement this chapter and the purposes of this chapter; and

33 (2) take any administrative action required by the
34 findings of Section 441.001.

35 (b) The authority granted by this section may be inferred
36 from the context of this chapter. (V.T.I.C. Art. 21.28-A, Secs. 1

1 (part), 11.)

2 Source Law

3 Sec. 1. . . . It is the purpose of the
4 Legislature to express, or to imply from context when
5 not expressed, an authorization, provision and
6 enabling of the promulgation of rules and regulations
7 by the board as directed in these legislative findings
8 and in the augmentation of this law; and to provide
9 also for any other requisite administrative
10 action. . . .

11 Sec. 11. The State Board of Insurance shall be
12 empowered to adopt and promulgate such reasonable
13 rules and regulations as may be necessary for the
14 augmentation and accomplishment of this Act, including
15 its purposes.

16 Revisor's Note

17 Sections 1 and 11, V.T.I.C. Article 21.28-A,
18 refer to the adoption of "rules and regulations." The
19 revised law omits the references to "regulations"
20 because under Section 311.005(5), Government Code
21 (Code Construction Act), a rule is defined to include a
22 regulation. That definition applies to the revised
23 law.

24 Revised Law

25 Sec. 441.006. RULES AND PROCEDURES FOR MERGER OF INSURERS.

26 (a) The commissioner shall adopt rules that encourage the merger of
27 insurers in weak financial condition with insurers in strong
28 financial condition in cases in which rehabilitation or
29 conservation of an insurer would be inefficient or impracticable.

30 (b) The rules and procedures for conservatorship may not be
31 used unless the rules and procedures adopted to promote the merger
32 of insurers in weak financial condition are followed. (V.T.I.C.
33 Art. 21.28-A, Sec. 1 (part).)

34 Source Law

35 Sec. 1. . . . in cases in which rehabilitation
36 or conservation would be inefficient or impracticable,
37 the board is directed to promulgate rules that
38 encourage the merger of insurers in weak financial
39 condition with insurers in strong financial condition.
40 . . . The rules and procedures authorized for
41 conservatorship may not be employed without following
42 the rules and procedures promulgated to promote the
43 merger of insurers in weak financial condition. . . .

1 Revised Law

2 Sec. 441.007. CONFLICT WITH OTHER LAWS. If this chapter
3 conflicts with any other law, this chapter prevails. (V.T.I.C.
4 Art. 21.28-A, Sec. 12(a) (part).)

5 Source Law

6 (a) . . . in the event of conflict between this
7 Article and any other Article, the provisions of this
8 Article shall govern.

9 Revised Law

10 Sec. 441.008. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE
11 PROCEDURE PROVISIONS. Section 2001.062, Government Code, does not
12 apply to a hearing conducted under this chapter. (V.T.I.C. Art.
13 21.28-A, Sec. 3 (part).)

14 Source Law

15 Sec. 3. . . . Section 15, Administrative
16 Procedure and Texas Register Act (Article 6252-13a,
17 Vernon's Texas Civil Statutes), does not apply to
18 hearings held by the Commissioner or his
19 representative under this Article.

20 Revisor's Note

21 (1) Section 3, V.T.I.C. Article 21.28-A, refers
22 to Section 15, Administrative Procedure and Texas
23 Register Act (Article 6252-13a, Vernon's Texas Civil
24 Statutes). That section was codified in 1993 as
25 Section 2001.062, Government Code, and the revised law
26 is drafted accordingly.

27 (2) Section 3, V.T.I.C. Article 21.28-A, refers
28 to a hearing "held by the Commissioner or his
29 representative under this Article." Chapter 40 of
30 this code provides that certain administrative
31 hearings required to be held under this code or another
32 insurance law of this state be conducted by the State
33 Office of Administrative Hearings. Therefore, the
34 revised law omits the reference to the hearing being
35 conducted by the commissioner or the commissioner's
36 representative.

37 [Sections 441.009-441.050 reserved for expansion]

1 SUBCHAPTER B. DETERMINATION AND NOTICE

2 Revised Law

3 Sec. 441.051. CIRCUMSTANCES CONSTITUTING INSOLVENCY OR
4 DELINQUENCY. For the purposes of this chapter, the circumstances
5 in which an insurer is considered insolvent, delinquent, or
6 threatened with delinquency include circumstances in which the
7 insurer:

8 (1) has required surplus, capital, or capital stock
9 that is impaired to an extent prohibited by law;

10 (2) continues to write new business when the insurer
11 does not have the surplus, capital, or capital stock that is
12 required by law to write new business;

13 (3) conducts the insurer's business fraudulently; or

14 (4) attempts to dissolve or liquidate without first
15 having made provisions satisfactory to the commissioner for
16 liabilities arising from insurance policies issued by the insurer.
17 (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (b).)

18 Source Law

19 Sec. 2. As used in this Article, the following
20 words, terms and phrases . . . include the meanings,
21 significance or application described in this Section,
22 except as another meaning is clearly requisite from
23 the purposes or is otherwise clearly indicated by the
24 context.

25 (b) In respect of an insurance company or
26 insurer, "insolvent" or "insolvency" and the phrases
27 in further identity of insurer delinquency and
28 threatened insurer delinquency, mean and include, and
29 the conditions to which this Article is applicable
30 include, but are not limited to, any one or more of the
31 following circumstances or conditions.

32 (1) if an insurance company's
33 required surplus, capital, or capital stock is
34 impaired to an extent prohibited by law, or

35 (2) if an insurance company continues
36 to write new business when it is not possessed of the
37 surplus, capital or capital stock which is required of
38 it by law to permit it to do so, or

39 (3) if the business of any such
40 insurance company is being conducted fraudulently, or

41 (4) if any such insurance company
42 attempts to dissolve or liquidate without first having
43 made provisions, satisfactory to the Commissioner of
44 Insurance, for liabilities arising from policies of
45 insurance issued by such company.

1 Revisor's Note

2 (1) Section 2, V.T.I.C. Article 21.28-A,
3 provides that the terms and phrases in that section
4 have certain meanings for purposes of Article 21.28-A,
5 "except as another meaning is clearly requisite from
6 the purposes or is otherwise clearly indicated by the
7 context." The revised law omits the quoted phrase as
8 unnecessary with respect to the terms "insolvent" and
9 "insolvency" and phrases describing a similar
10 condition that are defined in Section 2(b), Article
11 21.28-A. That section defines those terms and phrases
12 by referring to conditions "including" certain
13 specified conditions. The term "including" is a term
14 of enlargement and not of limitation as explained in
15 Revisor's Note (3) to this section. Because the list
16 of conditions contained in Section 2(b) is a
17 nonexclusive list, the definition provided by that
18 section by its terms allows for the application of a
19 different meaning with respect to the terms and
20 phrases that section defines.

21 (2) Section 2(b), V.T.I.C. Article 21.28-A,
22 states that certain conditions "mean and include"
23 certain circumstances. The revised law omits "mean"
24 as inaccurate because that section clearly provides a
25 nonexclusive description of the circumstances in which
26 an insurer is considered to be in a particular
27 condition.

28 (3) Section 2(b), V.T.I.C. Article 21.28-A,
29 states that certain conditions "include, but are not
30 limited to" certain circumstances. The revised law
31 omits "but are not limited to" as unnecessary because
32 Section 311.005(13), Government Code (Code
33 Construction Act), and Section 312.011(19),
34 Government Code, provide that "includes" and

1 "including" are terms of enlargement and not of
2 limitation and do not create a presumption that
3 components not expressed are excluded. Those sections
4 apply to the revised law.

5 (4) Section 2(b), V.T.I.C. Article 21.28-A,
6 refers to the "Commissioner of Insurance." Section
7 31.001 of this code defines "commissioner" for
8 purposes of this code and the other insurance laws of
9 this state to mean the commissioner of insurance.
10 Throughout this chapter, the revised law is drafted
11 accordingly.

12 Revised Law

13 Sec. 441.052. CIRCUMSTANCES CONSTITUTING INSURER EXCEEDING
14 POWERS. For the purposes of this chapter, the circumstances in
15 which an insurer is considered to have exceeded the insurer's
16 powers include circumstances in which the insurer:

17 (1) refuses to permit the commissioner, the
18 commissioner's deputy, or an examiner appointed by the department
19 to examine the insurer's books, papers, accounts, records, or
20 affairs;

21 (2) is organized in this state and removes from the
22 state books, papers, accounts, or records that are necessary to
23 examine the insurer;

24 (3) fails to promptly answer inquiries authorized by
25 Section 38.001;

26 (4) fails to comply with an order of the commissioner
27 to remedy, within the time prescribed by law, a prohibited
28 deficiency in the insurer's capital, capital stock, or surplus;

29 (5) without obtaining the commissioner's prior written
30 approval:

31 (A) totally reinsures the insurer's entire
32 outstanding business; or

33 (B) merges or consolidates substantially all of
34 the insurer's property or business with another insurer;

1 (6) continues to write business after the insurer's
2 certificate of authority has been revoked or suspended; or

3 (7) is in a condition that makes the insurer's
4 continuation in business hazardous to the public or to the
5 insurer's policyholders or certificate holders. (V.T.I.C. Art.
6 21.28-A, Secs. 2 (part), (c).)

7 Source Law

8 Sec. 2. As used in this Article, the following
9 words, terms and phrases . . . include the meanings,
10 significance or application described in this Section,
11 except as another meaning is clearly requisite from
12 the purposes or is otherwise clearly indicated by the
13 context.

14 (c) "Exceeded its Powers" includes and
15 means but is not limited to the following
16 circumstances:

17 (1) if an insurance company has
18 refused to permit examination of its books, papers,
19 accounts, records, or affairs by the Commissioner of
20 Insurance, his deputy, or duly commissioned examiners;
21 or if any insurance company, organized in the State of
22 Texas, has removed from the state such books, papers,
23 accounts or records necessary for an examination of
24 such insurance company, or

25 (2) if an insurance company has
26 failed to promptly answer inquiries authorized by
27 Article 1.24 of this Code, or

28 (3) if an insurance company has
29 neglected or refused to observe an order of the
30 Commissioner to make good, within the time prescribed
31 by law, any prohibited deficiency in its capital,
32 capital stock, or surplus, or

33 (4) if an insurance company without
34 first having obtained written approval of the
35 Commissioner has by contract or otherwise: (i)
36 totally reinsured its entire outstanding business, or
37 (ii) merged or consolidated substantially its entire
38 property or business with another insurer; or

39 (5) if any insurance company is
40 continuing to write business after its license has
41 been revoked or suspended; or

42 (6) if an insurance company is in a
43 condition that renders the continuance of its business
44 hazardous to the public or to holders of its policies
45 or certificates of insurance.

46 Revisor's Note

47 (1) Section 2, V.T.I.C. Article 21.28-A,
48 provides that the terms and phrases in that section
49 have certain meanings for purposes of Article 21.28-A,
50 "except as another meaning is clearly requisite for
51 the purposes or is otherwise clearly indicated by the
52 context." The revised law omits the quoted phrase as

1 unnecessary with respect to the phrase "exceeded its
2 powers" that is defined in Section 2(c), Article
3 21.28-A, which defines the phrase by referring to
4 circumstances that include certain specified
5 circumstances, for the reason stated in Revisor's Note
6 (1) to Section 441.051.

7 (2) Section 2(c), V.T.I.C. Article 21.28-A,
8 provides that a certain action by an insurer "includes
9 and means but is not limited to" the circumstances
10 specified by that section. The revised law omits
11 "means" as inaccurate because that section clearly
12 provides a nonexclusive description of the
13 circumstances under which an insurer is considered to
14 have exceeded the insurer's powers. The revised law
15 omits "but is not limited to" for the reason stated in
16 Revisor's Note (3) to Section 441.051.

17 (3) Section 2(c)(1), V.T.I.C. Article 21.28-A,
18 refers to "duly commissioned examiners." The
19 substance of Section 2(c)(1), Article 21.28-A, was
20 originally enacted by Chapter 281, Acts of the 60th
21 Legislature, Regular Session, 1967, and included the
22 reference to "commissioned" examiners. V.T.I.C.
23 Article 1.04A, enacted by Chapter 1082, Acts of the
24 71st Legislature, Regular Session, 1989, and revised
25 in this code in relevant part as Section 401.101,
26 provides that the department may use a salaried
27 department examiner or the services of any qualified
28 person or firm to examine an insurer. Therefore, the
29 revised law omits the reference to the requirement
30 that an examiner be "commissioned" as impliedly
31 repealed by Article 1.04A, and substitutes a reference
32 to an examiner "appointed" by the department. The
33 revised law also omits the reference to "duly" in this
34 section and throughout this chapter as unnecessary

1 because the word does not add to the clear meaning of
2 the law. In this context, an examiner purporting to be
3 commissioned is not commissioned if that commission
4 was not properly granted.

5 (4) Section 2(c)(4), V.T.I.C. Article 21.28-A,
6 refers to certain actions by an insurer "by contract or
7 otherwise." The revised law omits the quoted phrase as
8 unnecessary because it does not provide a limitation
9 on how the action may be taken.

10 (5) Section 2(c)(5), V.T.I.C. Article 21.28-A,
11 refers to an insurer's "license." The revised law
12 substitutes "certificate of authority" for "license"
13 because "certificate of authority" is the term used
14 throughout this code in relation to an entity's
15 authority to engage in business.

16 Revised Law

17 Sec. 441.053. NOTICE TO INSURER. (a) If at any time the
18 commissioner determines that an insurer is insolvent, has exceeded
19 the insurer's powers, or has otherwise failed to comply with the
20 law, the commissioner shall:

21 (1) notify the insurer of that determination;

22 (2) provide to the insurer a written list of the
23 commissioner's requirements to abate the conditions on which that
24 determination was based; and

25 (3) if the commissioner determines that the insurer
26 requires supervision, notify the insurer that the insurer is under
27 the commissioner's supervision and that the commissioner is
28 invoking this chapter.

29 (b) The commissioner may provide the notice and information
30 to an insurer that agrees to supervision.

31 (c) The insurer shall comply with the commissioner's
32 requirements. (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (d) (part),
33 3 (part).)

1 contrary to the definition provided by Section 2(d).

2 (2) Section 3, V.T.I.C. Article 21.28-A, refers
3 to a determination made "upon examination or at any
4 other time." The revised law omits "upon examination"
5 because, in context, "upon examination" is included
6 within the meaning of "at any time."

7 (3) Section 3, V.T.I.C. Article 21.28-A, refers
8 to several determinations made by the commissioner of
9 insurance, including a determination that an insurer
10 is in a "condition . . . such as to render the
11 continuance of its business hazardous to the public or
12 to holders of its policies or certificates of
13 insurance" or that the insurer has exceeded its
14 powers. The revised law omits the quoted phrase
15 because that condition is specified by Section
16 2(c)(6), Article 21.28-A, revised in this chapter as
17 Section 441.052(7), as a circumstance under which an
18 insurer has exceeded the insurer's powers.

19 (4) Section 3, V.T.I.C. Article 21.28-A, refers
20 to an insurer that "appears to have exceeded its powers
21 (as defined herein)." The revised law omits the
22 reference to "as defined herein" as unnecessary.
23 Section 2(c), V.T.I.C. Article 21.28-A, revised in
24 this chapter as Section 441.052, defines "exceeded its
25 powers" to include a list of circumstances in which an
26 insurer appears to have exceeded the insurer's powers.
27 That section applies by its own terms to the law
28 revised in this section. Similar changes are made
29 throughout this chapter.

30 (5) Section 3, V.T.I.C. Article 21.28-A,
31 provides that an insurer is required to comply with the
32 "lawful requirements" of the commissioner of
33 insurance. The revised law omits as unnecessary in
34 this section and in similar provisions throughout this

chapter the reference to the requirements being "lawful." An insurer is not required to comply with any requirement of the commissioner that is unlawful.

[Sections 441.054-441.100 reserved for expansion]

SUBCHAPTER C. SUPERVISION

Revised Law

Sec. 441.101. APPOINTMENT OF SUPERVISOR. The commissioner may appoint a supervisor to supervise an insurer. (V.T.I.C. Art. 21.28-A, Sec. 4(a) (part).)

Source Law

Sec. 4. (a) . . . the Commissioner may appoint a supervisor to supervise such insurance company and

Revisor's Note

Section 4(a), V.T.I.C. Article 21.28-A, provides that the commissioner of insurance may appoint a supervisor for an insurer, and Section 4(b) of that article provides that the "Liquidator of the State Board of Insurance, or his duly appointed deputy," may be appointed to serve as the supervisor. The position of liquidator was a position provided for by V.T.I.C. Article 21.28, revised as Chapter 442 of this code, before that article was amended by Chapter 12, Acts of the 72nd Legislature, 2nd Called Session, 1991. The functions performed by the liquidator are now performed by the receiver, who may be the commissioner or a special deputy receiver, in accordance with Section 2(a), V.T.I.C. Article 21.28, revised in relevant part as Section 442.051. The revised law omits Section 4(b) because, given that the position of liquidator no longer exists, it is no longer necessary or accurate to state that the liquidator or the liquidator's deputy may serve as supervisor. The omitted law reads:

(b) The Liquidator of the State Board

1 of Insurance, or his duly appointed deputy,
2 may be appointed to serve as the supervisor.

3 Revised Law

4 Sec. 441.102. TIME FOR COMPLIANCE WITH REQUIREMENTS OF
5 SUPERVISION. An insurer under supervision must comply with the
6 commissioner's requirements under Section 441.053 not later than
7 the 180th day after the date of the commissioner's notice of
8 supervision. (V.T.I.C. Art. 21.28-A, Sec. 3 (part).)

9 Source Law

10 Sec. 3. . . . If placed under supervision, the
11 insurance company shall have not more than one
12 hundred-eighty (180) days from the date of the
13 Commissioner's notice of supervision to comply with
14 the requirements of the Commissioner. . . .

15 Revised Law

16 Sec. 441.103. PAYMENT OF CLAIMS. An insurer under
17 supervision shall continue to pay claims under an insurance policy
18 according to the terms of the policy. (V.T.I.C. Art. 21.28-A, Sec.
19 3 (part).)

20 Source Law

21 Sec. 3. . . . During the period of supervision,
22 the insurance company shall continue to pay claims
23 according to terms of the insurance policy, and

24 Revised Law

25 Sec. 441.104. PROHIBITED ACTS DURING SUPERVISION. During
26 supervision, the commissioner may prohibit the insurer from taking
27 any of the following actions without the prior approval of the
28 commissioner or supervisor:

29 (1) disposing of, conveying, or encumbering any of the
30 insurer's assets or business in force;

31 (2) withdrawing money from the insurer's bank
32 accounts;

33 (3) lending or investing the insurer's money;

34 (4) transferring the insurer's property;

35 (5) incurring a debt, obligation, or liability;

36 (6) merging or consolidating with another company;

37 (7) entering into a new reinsurance contract or
38 treaty;

1 (8) terminating, surrendering, forfeiting,
2 converting, or lapsing an insurance policy, except for nonpayment
3 of premiums due; or

4 (9) releasing, paying, or refunding premium deposits,
5 accrued cash or loan values, unearned premiums, or other reserves
6 on an insurance policy. (V.T.I.C. Art. 21.28-A, Sec. 4(a) (part).)

7 Source Law

8 (a) During the period of supervision, the
9 Commissioner . . . may provide that the insurance
10 company may not do any of the following things, during
11 the period of supervision, without the prior approval
12 of the Commissioner or his supervisor:

13 (1) Dispose of, convey or encumber any of
14 its assets or its business in force;

15 (2) Withdraw any of its bank accounts;

16 (3) Lend any of its funds;

17 (4) Invest any of its funds;

18 (5) Transfer any of its property;

19 (6) Incur any debt, obligation or
20 liability;

21 (7) Merge or consolidate with another
22 company;

23 (8) Enter into any new reinsurance
24 contract or treaty; or

25 (9) Terminate, surrender, forfeit,
26 convert, or lapse any policy or contract of insurance,
27 except for nonpayment of premiums due, or to release,
28 pay, or refund premium deposits, accrued cash or loan
29 values, unearned premiums, or other reserves on any
30 insurance policy or contract.

31 Revisor's Note

32 (1) Section 4(a), V.T.I.C. Article 21.28-A,
33 refers to the lending and investing of "funds." The
34 revised law substitutes "money" for "funds" because,
35 in context, the terms are synonymous and the former is
36 more commonly used.

37 (2) Section 4(a), V.T.I.C. Article 21.28-A,
38 refers to a "policy or contract" of insurance. The
39 revised law omits the references to "contract" in this
40 section and throughout this chapter because, in
41 context, an insurance policy and insurance contract
42 are synonymous, and the term "insurance policy" is
43 more commonly used in Article 21.28-A, revised as this
44 chapter.

Revised Law

Sec. 441.105. HEARING ON SUPERVISION; TERMINATION BY CONSERVATION OR RELEASE. (a) On the commissioner's own motion or the motion of a party of record, a hearing may be scheduled relating to an insurer under supervision after at least 10 days' written notice to each party of record. Notice may be waived by the parties of record.

(b) The commissioner shall place the insurer in conservatorship if, after the hearing, it is determined that the insurer:

(1) failed to comply with the commissioner's requirements;

(2) has not been rehabilitated;

(3) is insolvent; or

(4) appears to have exceeded the insurer's powers.

(c) The commissioner may release the insurer from supervision if, after the hearing, it is determined that the insurer:

(1) has been rehabilitated; or

(2) is no longer in a condition that makes the insurer's continuation in business hazardous to the public or to the insurer's policyholders or certificate holders. (V.T.I.C. Art. 21.28-A, Sec. 3 (part).)

Source Law

Sec. 3. . . . the Commissioner may schedule a hearing relating to the insurance company in supervision with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record. However, notice may be waived by the parties of record. If after hearing it is determined that the insurance company has failed to comply with the lawful requirements of the Commissioner, it has not been rehabilitated, it is insolvent, or it is otherwise in such a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall take charge as conservator of the insurance company and all of the property and effects thereof. If after hearing it is

1 determined that the insurance company has been
2 rehabilitated or its condition has otherwise been
3 remedied such that the continuance of its business is
4 no longer hazardous to the public or to holders of its
5 policies or certificates of insurance, the
6 Commissioner may release that insurance company from
7 supervision. . . .

8 Revisor's Note

9 (1) Section 3, V.T.I.C. Article 21.28-A,
10 provides that "the Commissioner [of insurance] may
11 schedule" a hearing on at least 10 days' notice. The
12 revised law omits the reference to the commissioner
13 scheduling the hearing for the reason stated in
14 Revisor's Note (2) to Section 441.008.

15 (2) Section 3, V.T.I.C. Article 21.28-A, refers
16 to several determinations made by the commissioner of
17 insurance, including a determination that an insurer
18 is in "such a condition as to render the continuance of
19 its business hazardous to the public or to holders of
20 its policies or certificates of insurance" or that the
21 insurer has exceeded its powers. The revised law omits
22 the quoted phrase for the reason stated in Revisor's
23 Note (3) to Section 441.053.

24 (3) Section 3, V.T.I.C. Article 21.28-A, refers
25 to the commissioner of insurance taking charge of an
26 insurer by "acting for himself, or through a
27 conservator appointed by the Commissioner of Insurance
28 for that purpose," placing the insurer in
29 conservatorship. The revised law omits the provision
30 as unnecessary because it duplicates the duties of the
31 conservator under Section 5, Article 21.28-A, revised
32 in relevant part in this chapter as Section 441.153.

33 [Sections 441.106-441.150 reserved for expansion]

34 SUBCHAPTER D. CONSERVATORSHIP

35 Revised Law

36 Sec. 441.151. APPOINTMENT OF CONSERVATOR. (a) The
37 commissioner may appoint a conservator for an insurer:

1 (1) if:
2 (A) after notice and opportunity for hearing, it
3 is determined that the insurer:
4 (i) is insolvent;
5 (ii) appears to have exceeded the insurer's
6 powers; or
7 (iii) has failed to comply with any
8 requirement of the commissioner; or
9 (B) the insurer agrees to the appointment of a
10 conservator; and
11 (2) if it is determined that supervision is inadequate
12 to rehabilitate the insurer.

13 (b) The commissioner may appoint a conservator. (V.T.I.C.
14 Art. 21.28-A, Secs. 2 (part), (d) (part), 5 (part).)

15 Source Law

16 Sec. 2. As used in this Article, the following
17 words, terms and phrases . . . include the meanings,
18 significance or application described in this Section,
19 except as another meaning is clearly requisite from
20 the purposes or is otherwise clearly indicated by the
21 context.

22 (d) "Consent," as used in this Act,
23 includes and means agreement to . . . conservatorship
24 by the insurance company.

25 Sec. 5. If, after notice and opportunity for
26 hearing, it is determined that such insurance company
27 is insolvent, or its condition is such as to render the
28 continuance of its business hazardous to the public or
29 to holders of its policies or certificates of
30 insurance, or if the company appears to have exceeded
31 its powers as defined in this Article, or has failed to
32 comply with any lawful requirements of the
33 Commissioner, or upon consent by an insurance company,
34 and if it is determined that supervision is inadequate
35 to accomplish the rehabilitation of the company, the
36 Commissioner in his discretion may appoint a
37 conservator,

38 Revisor's Note

39 (1) Section 2, V.T.I.C. Article 21.28-A,
40 provides that the terms and phrases in that section
41 have certain meanings for purposes of Article 21.28-A,
42 "except as another meaning is clearly requisite from
43 the purposes or is otherwise clearly indicated by the

1 context." Section 2(d), Article 21.28-A, defines
2 "consent" by providing that the term "means and
3 includes" agreement to certain specified actions. The
4 revised law incorporates the applicable substance of
5 the definition in the revised law derived from Section
6 5, Article 21.28-A, and omits the quoted exception and
7 the reference to "includes" for the reason stated in
8 Revisor's Note (1) to Section 441.053.

9 (2) Section 5, V.T.I.C. Article 21.28-A, refers
10 to a determination that an insurer's "condition is such
11 as to render the continuance of its business hazardous
12 to the public or to holders of its policies or
13 certificates of insurance" or that the insurer has
14 exceeded its powers. The revised law omits the quoted
15 phrase for the reason stated in Revisor's Note (3) to
16 Section 441.053.

17 (3) Section 5, V.T.I.C. Article 21.28-A,
18 provides that the commissioner of insurance may
19 appoint a conservator and that "[t]he liquidator of
20 the State Board of Insurance, or his duly appointed
21 deputy," may be appointed to serve as the conservator.
22 For the reasons stated in the revisor's note to Section
23 441.101, the revised law omits that provision because
24 it is no longer necessary or accurate. The omitted law
25 reads:

26 Sec. 5. . . . The liquidator of the
27 State Board of Insurance, or his duly
28 appointed deputy, may be appointed to serve
29 as the conservator. . . .

30 Revised Law

31 Sec. 441.152. NOTICE OF CONSERVATORSHIP. (a) Not later
32 than the seventh day after the date the commissioner enters an order
33 appointing a conservator for an insurer as provided by Section
34 441.151 or Subchapter F, the commissioner shall publish notice of
35 the conservatorship in at least one newspaper of general

1 circulation in each county with a population of at least 100,000.

2 (b) The notice must include:

3 (1) the name of the insurer placed in conservatorship;

4 (2) the date the insurer was placed in conservatorship
5 in this state;

6 (3) the reasons for placing the insurer in
7 conservatorship;

8 (4) any action with respect to the insurer that is
9 available to a policyholder; and

10 (5) any requirement with which a policyholder must
11 comply. (V.T.I.C. Art. 21.28-A, Sec. 5A.)

12 Source Law

13 Sec. 5A. (a) On appointment of a conservator as
14 provided by Sections 5 and 6 of this Article, the
15 Commissioner of Insurance shall publish notice of the
16 conservatorship in at least one newspaper with general
17 circulation in each county that has a population of at
18 least 100,000 according to the most recent federal
19 decennial census.

20 (b) The notice must include:

21 (1) the name of the insurer placed in
22 conservatorship;

23 (2) the date on which the insurer was
24 placed in conservatorship in this state;

25 (3) the reasons for placing the insurer in
26 conservatorship; and

27 (4) any courses of action with relation to
28 the insurer available to policyholders and any duties
29 with which the policyholders may be required to
30 comply.

31 (c) The Commissioner of Insurance must publish
32 the notice required by this section not later than the
33 seventh day after the date the Commissioner enters an
34 order placing the insurer in conservatorship.

35 Revisor's Note

36 Section 5A(a), V.T.I.C. Article 21.28-A,
37 describes a population number that is to be determined
38 "according to the most recent federal decennial
39 census." The revised law omits the quoted language as
40 unnecessary. Section 311.005(3), Government Code
41 (Code Construction Act), and Section 312.011(20),
42 Government Code, define "population" as population
43 according to the most recent federal decennial census.
44 That definition applies to the revised law.

Revised Law

Sec. 441.153. POWERS AND DUTIES OF CONSERVATOR. (a) The conservator appointed for an insurer under Section 441.151 shall immediately take charge of the insurer and all of the insurer's property, books, records, and effects, conduct the insurer's business, and act to remove the causes and conditions that made the conservatorship order necessary, as directed by the commissioner.

(b) During the conservatorship, the conservator shall provide reports to the commissioner as required by the commissioner and may:

(1) take all necessary measures in the conservator's own name as conservator to preserve, protect, or recover any asset or property of the insurer, including a claim or cause of action that the insurer may assert; and

(2) file a suit, or prosecute and defend a suit filed by or against the insurer, as the conservator considers necessary to protect all of the interested parties or any property affected by the suit. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

Source Law

Sec. 5. . . . [the Commissioner in his discretion may appoint] a conservator, who shall immediately take charge of such insurance company and all of the property, books, records, and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship, the conservator shall make such reports to the Commissioner from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such insurance company, including claims or causes of action belonging to or which may be asserted by such insurance company, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. . . .

Revisor's Note

(1) Section 5, V.T.I.C. Article 21.28-A, provides that a conservator shall provide reports to

1 the commissioner of insurance "from time to time" as
2 required by the commissioner. The revised law omits
3 the quoted language because the duty to provide
4 reports as required by the commissioner implies the
5 duty to do so from time to time.

6 (2) Section 5, V.T.I.C. Article 21.28-A, refers
7 to a claim or cause of action "belonging to or which
8 may be asserted by" an insurer. The revised law omits
9 as unnecessary the reference to "belonging to"
10 because, in context, a claim or cause of action that
11 "belongs to" an insurer is a claim or cause of action
12 that the insurer may assert.

13 Revised Law

14 Sec. 441.154. PAYMENT OF CLAIMS. An insurer under
15 conservatorship shall continue to pay claims under an insurance
16 policy according to the terms of the policy. (V.T.I.C. Art.
17 21.28-A, Sec. 9 (part).)

18 Source Law

19 Sec. 9. . . . During the period of
20 conservatorship, the insurance company shall continue
21 to pay claims according to the terms of the insurance
22 policy. . . .

23 Revised Law

24 Sec. 441.155. REINSURANCE DURING CONSERVATORSHIP. (a) If
25 during a conservatorship it appears that the interest of the
26 insurer's policyholders or certificate holders is best protected by
27 reinsuring the policies or certificates, the conservator may, with
28 the approval of or at the direction of the commissioner:

29 (1) reinsure all or part of the insurer's policies or
30 certificates with a solvent insurer authorized to engage in
31 business in this state; and

32 (2) to the extent that the insurer has reserves
33 attributable to the reinsured policies or certificates, transfer to
34 the reinsurer reserves in an amount sufficient to reinsure the
35 policies or certificates.

1 (b) A transfer of reserves under this section may not be
2 considered a preference of a creditor. (V.T.I.C. Art. 21.28-A,
3 Sec. 5 (part).)

4 Source Law

5 Sec. 5. . . . If at the time of appointment of a
6 conservator or at any time during the pendency of such
7 conservatorship it appears that the interest of the
8 policy holders or certificate holders of such
9 insurance company can best be protected by reinsuring
10 the same, the conservator may, with the approval of or
11 at the direction of the Commissioner: (1) reinsure all
12 or any part of such insurance company's policies or
13 certificates of insurance with some solvent insurance
14 company authorized to transact business in this state,
15 and (2) to the extent that such insurance company in
16 conservatorship is possessed of reserves attributable
17 to such policies or certificates of insurance, the
18 conservator may transfer to the reinsuring company
19 such reserves or any portion thereof as may be required
20 to consummate the reinsurance of such policies, and
21 any such reserves so transferred shall not be deemed a
22 preference of creditors. . . .

23 Revised Law

24 Sec. 441.156. HEARINGS DURING CONSERVATORSHIP. (a) On
25 the commissioner's own motion or the motion of a party of record, a
26 hearing relating to an insurer in conservatorship may be scheduled
27 after at least 10 days' written notice to each party of record.

28 (b) The notice required by this section may be waived by the
29 parties of record. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

30 Source Law

31 Sec. 5. . . . During the pendency of a
32 conservatorship, the Commissioner may schedule a
33 hearing relating to the insurance company in
34 conservatorship with not less than ten (10) days'
35 written notice to all parties of record on his own
36 motion or that of any party of record; provided,
37 however, that notice may be waived by the parties of
38 record. . . .

39 Revisor's Note

40 Section 5, V.T.I.C. Article 21.28-A, provides
41 that "the Commissioner [of insurance] may schedule" a
42 hearing on at least 10 days' notice. The revised law
43 omits the reference to the commissioner scheduling the
44 hearing for the reason stated in Revisor's Note (2) to
45 Section 441.008.

Revised Law

Sec. 441.157. IMMUNITY. A conservator and the conservator's agents and employees are not liable, and a cause of action does not arise against the conservator or an agent or employee, for an action taken or not taken by the conservator, agent, or employee in connection with the adjustment, negotiation, or settlement of a claim. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

Source Law

Sec. 5. . . . A conservator and his agents and employees are not liable for and a cause of action may not be brought against any of them for an action taken or not taken by them relating to the adjustment, negotiation, or settlement of claims.

Revised Law

Sec. 441.158. VENUE. (a) A suit against an insurer in conservatorship or against the conservator may be filed only in Travis County unless the cause of action is based on the terms of an insurance policy issued by the insurer.

(b) A conservator appointed under this chapter may file suit in Travis County against any person to preserve, protect, or recover any asset or property of the insurer, including a claim or cause of action that may be asserted by the insurer. (V.T.I.C. Art. 21.28-A, Sec. 8.)

Source Law

Sec. 8. Except for causes of action based upon terms of an insurance policy or policy or policies issued by an insurance company placed in conservatorship, any suit filed against an insurance company or its conservator, after the entrance of an order by the Commissioner of Insurance placing such insurance company in conservatorship and while such order is in effect, shall be brought in a court of competent jurisdiction in Travis County, Texas, and not elsewhere. The conservator appointed hereunder for such company may file suit in any court of competent jurisdiction in Travis County, Texas, against any person for the purpose of preserving, protecting, or recovering any assets or property of such insurance company including claims or causes of action belonging to or which may be asserted by such insurance company.

Revisor's Note

(1) Section 8, V.T.I.C. Article 21.28-A, refers to a suit filed in "a court of competent jurisdiction."

1 The revised law omits the references to "a court"
2 because a suit may only be brought in a court. The
3 revised law omits the references to "competent
4 jurisdiction" for the reason stated in Revisor's Note
5 (2) to Section 441.004.

6 (2) Section 8, V.T.I.C. Article 21.28-A, refers
7 to a claim or cause of action "belonging to or which
8 may be asserted by" an insurer. The revised law omits
9 the reference to "belonging to" for the reason stated
10 in Revisor's Note (2) to Section 441.153.

11 Revised Law

12 Sec. 441.159. DURATION OF CONSERVATORSHIP. (a) Except as
13 provided by Subsection (b), a conservator appointed under this
14 chapter shall complete the conservator's duties as required by this
15 chapter not later than the 90th day after the date of appointment.

16 (b) If the commissioner issues written findings that there
17 is a substantial likelihood of rehabilitation of the insurer in
18 conservatorship, the commissioner may extend the conservatorship
19 for additional successive 30-day periods. The total period of
20 extensions may not exceed 180 consecutive days. A hearing is not
21 required before the commissioner issues the findings. (V.T.I.C.
22 Art. 21.28-A, Sec. 9 (part).)

23 Source Law

24 Sec. 9. The conservator shall complete his
25 duties and responsibilities as required by this Act
26 not later than the ninetieth (90th) day after the date
27 on which he is appointed conservator. The
28 Commissioner of Insurance may extend the
29 conservatorship for additional successive periods of
30 thirty (30) days each for a total period of extensions
31 not to exceed one hundred and eighty (180) successive
32 days, if the Commissioner determines and issues
33 written findings that there is a substantial
34 likelihood of rehabilitation and no hearing is
35 required before the Commissioner makes his
36 determination. . . .

37 Revisor's Note

38 (1) Section 9, V.T.I.C. Article 21.28-A, refers
39 to the "duties and responsibilities" of a conservator.
40 The revised law omits the reference to

1 "responsibilities" as unnecessary because that term is
2 included within the meaning of "duties."

3 (2) Section 9, V.T.I.C. Article 21.28-A, refers
4 to circumstances in which the commissioner of
5 insurance "determines and issues" certain findings.
6 The revised law omits as unnecessary the reference to
7 "determines" because the commissioner necessarily
8 must determine the findings before issuing the
9 findings.

10 Revised Law

11 Sec. 441.160. RETURN TO MANAGEMENT. An insurer that is
12 rehabilitated shall be returned to management or placed under new
13 management under reasonable conditions that best tend to prevent
14 defeat of the purposes of the conservatorship. (V.T.I.C. Art.
15 21.28-A, Sec. 9 (part).)

16 Source Law

17 Sec. 9. . . . If rehabilitated, the
18 rehabilitated insurance company shall be returned to
19 management or new management under such reasonable
20 conditions as will best tend to prevent the defeat of
21 the purposes for which it was placed in
22 conservatorship.

23 [Sections 441.161-441.200 reserved for expansion]

24 SUBCHAPTER E. PROVISIONS APPLYING TO SUPERVISION AND
25 CONSERVATORSHIP

26 Revised Law

27 Sec. 441.201. CONFIDENTIALITY. (a) Hearings and orders,
28 notices, correspondence, reports, records, and other information
29 in the department's possession relating to the supervision or
30 conservatorship of an insurer are confidential during the
31 supervision or conservatorship. On termination of the supervision
32 or conservatorship, the information in the department's custody
33 that relates to the supervision or conservatorship is public
34 information.

35 (b) This section does not prohibit access by the department
36 to hearings or orders, notices, correspondence, reports, records,

1 or other information.

2 (c) The provisions of Chapter 2001, Government Code,
3 relating to discovery apply to the parties of record in a proceeding
4 under this chapter.

5 (d) The commissioner may open a proceeding under this
6 chapter or disclose information that is confidential under this
7 section to a department, agency, or instrumentality of this state,
8 another state, or the United States if the commissioner determines
9 that opening the proceeding or disclosing the information is
10 necessary or proper to enforce the laws of this state, another
11 state, or the United States.

12 (e) An officer or employee of the department is not liable
13 for a release of information that is confidential under this
14 section unless it is shown that the release was accomplished with
15 actual malice.

16 (f) This section does not apply to information:

17 (1) if the insurer's insureds are not protected by
18 Chapter 462, 463, or 2602, or substantially similar statutes; or

19 (2) on the appointment by a court of a receiver for the
20 insurer. (V.T.I.C. Art. 21.28-A, Sec. 3A.)

21 Source Law

22 Sec. 3A. (a) All hearings, orders, notices,
23 correspondence, reports, records, and other
24 information in the possession of the Texas Department
25 of Insurance relating to the supervision or
26 conservatorship of any insurance company are
27 confidential during the period of supervision and
28 conservatorship. On termination of the supervision
29 and conservatorship, the information in the custody of
30 the department that relates to the supervision and
31 conservatorship becomes public information.

32 (b) This section does not prohibit access to
33 hearings, orders, notices, correspondence, reports,
34 records, and other information by the State Board of
35 Insurance.

36 (c) The provisions of the Administrative
37 Procedure and Texas Register Act (Article 6252-13a,
38 Vernon's Texas Civil Statutes) relating to discovery
39 apply to the parties of record in these proceedings.

40 (d) The Commissioner of Insurance or the State
41 Board of Insurance may open the proceedings or
42 disclose the information to a department, agency, or
43 instrumentality of this or another state or the United
44 States if the Commissioner of Insurance or the State
45 Board of Insurance determines that the disclosure is
46 necessary or proper for the enforcement of the laws of

1 this or another state or the United States.

2 (e) An officer or employee of the Texas
3 Department of Insurance is not liable for release of
4 information without a showing that the release of
5 information was accomplished with actual malice.

6 This section does not apply to information (1) if
7 the insureds of the insurance company are not
8 protected by Article 9.48, 21.28-C, or 21.28-D of this
9 code or by statutes substantially similar to those
10 Articles, or (2) on the appointment of a receiver for
11 the insurance company by a court of competent
12 jurisdiction.

13 Revisor's Note

14 (1) Section 3A(a), V.T.I.C. Article 21.28-A,
15 refers to the "Texas Department of Insurance." The
16 revised law substitutes a reference to "department"
17 for "Texas Department of Insurance" because Section
18 31.001 of this code defines "department" for purposes
19 of this code and the other insurance laws of this state
20 to mean the Texas Department of Insurance.

21 (2) Section 3A(c), V.T.I.C. Article 21.28-A,
22 refers to the Administrative Procedure and Texas
23 Register Act (Article 6252-13a, Vernon's Texas Civil
24 Statutes). The relevant part of that statute was
25 codified in 1993 as Chapter 2001, Government Code, and
26 the revised law is drafted accordingly.

27 Revised Law

28 Sec. 441.202. COSTS OF SUPERVISION AND CONSERVATORSHIP.
29 The commissioner shall determine the costs related to services
30 provided by a supervisor or conservator under this chapter.
31 Subject to Section 442.551, the costs shall be charged against the
32 insurer's assets and paid as determined by the commissioner.
33 (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

34 Source Law

35 Sec. 5. . . . The cost incident to the
36 supervisor's and conservator's service shall be fixed
37 and determined by the Commissioner of Insurance and,
38 subject to Subsection (a) of Section 8 of Article 21.28
39 of this code, shall be a charge against the assets and
40 funds of the insurance company to be allowed and paid
41 as the Commissioner of Insurance may determine.

42 . . .

1 collection or repayment of the fees. (V.T.I.C. Art. 21.28-A, Secs.
2 17(a) (part), (b).)

3 Source Law

4 Sec. 17. (a) The State Board of Insurance may
5 collect fees from any entity that is regulated by the
6 board as provided by Subsection (h) of Section 7 of
7 Article 1.10 of this code and that is successfully
8 rehabilitated by the board. The fees shall be in
9 amounts sufficient to cover but not exceed the costs of
10 rehabilitation of that entity. The board shall use the
11 fees for the sole purpose of the rehabilitation of the
12 entity from which they are collected. Fees collected
13 under this subsection shall be deposited in and
14 expended through the State Board of Insurance
15 Operating Fund. . . .

16 (b) The Commissioner may determine the terms of
17 the collection or repayment of the fees from any
18 successfully rehabilitated entity.

19 Revisor's Note

20 (1) Section 17(a), V.T.I.C. Article 21.28-A,
21 refers to "Subsection (h) of Section 7 of Article 1.10
22 of this code." Section 7(h), V.T.I.C. Article 1.10,
23 was relettered as Section 7(g) by Section 1.07,
24 Chapter 685, Acts of the 73rd Legislature, Regular
25 Session, 1993. Section 7(g), Article 1.10, was
26 revised in 1999 in Section 82.002 of this code. The
27 revised law is drafted accordingly.

28 (2) Section 17(a), V.T.I.C. Article 21.28-A,
29 requires fees to be deposited in the State Board of
30 Insurance operating fund. Under the authority of
31 Chapter 4, Acts of the 72nd Legislature, 1st Called
32 Session, 1991, the Texas Department of Insurance
33 operating fund (the later name of the State Board of
34 Insurance operating fund) was converted to an account
35 in the general revenue fund. The revised law has been
36 drafted accordingly.

37 Revised Law

38 Sec. 441.204. REVIEW AND STAY OF CERTAIN ACTS OF SUPERVISOR
39 OR CONSERVATOR. (a) An insurer under supervision or
40 conservatorship may request the commissioner or, in the
41 commissioner's absence, the commissioner's appointed deputy to

1 review an action taken or proposed to be taken by the supervisor or
2 conservator.

3 (b) A request for review under this section must specify the
4 manner in which the action is believed to not be in the insurer's
5 best interests.

6 (c) A request for review under this section stays the
7 specified action pending review by the commissioner or the
8 commissioner's deputy. (V.T.I.C. Art. 21.28-A, Sec. 7 (part).)

9 Source Law

10 Sec. 7. During the period of supervision and
11 during the period of conservatorship, the insurance
12 company may request the Commissioner of Insurance or
13 in his absence, the duly appointed deputy for such
14 purpose, to review an action taken or proposed to be
15 taken by the supervisor or conservator, specifying
16 wherein the action complained of is believed not to be
17 in the best interests of the insurance company, and
18 such request shall stay the action specified pending
19 review of such action by the Commissioner or his duly
20 appointed deputy. . . .

21 Revised Law

22 Sec. 441.205. APPEAL OF CERTAIN ORDERS. The following
23 orders of the commissioner may be appealed under Subchapter D,
24 Chapter 36:

25 (1) an order appointing a supervisor and providing
26 that the insurer may not engage in certain acts as provided by
27 Section 441.104;

28 (2) an order appointing a conservator; and

29 (3) an order following the review under Section
30 441.204 of an action of a supervisor or conservator. (V.T.I.C. Art.
31 21.28-A, Sec. 7 (part).)

32 Source Law

33 Sec. 7. . . . Any order entered by the
34 Commissioner appointing a supervisor and providing
35 that the insurance company shall not do certain acts as
36 provided in Section 4 of this Article, any order
37 entered by the Commissioner appointing a conservator,
38 and any order by the Commissioner following the review
39 of an action of the supervisor or conservator as
40 hereinabove provided may be appealed under Article
41 1.04 of this code. . . .

42 Revisor's Note

43 Section 7, V.T.I.C. Article 21.28-A, provides for

1 judicial review of certain orders issued by the
2 commissioner of insurance under V.T.I.C. Article 1.04,
3 revised in 1999 as Subchapter D, Chapter 36, of this
4 code, and provides for an appeal to an appellate court.
5 The revised law omits the provisions for appeal to an
6 appellate court as unnecessary because the provisions
7 duplicate Section 36.205 of this code. The omitted law
8 reads:

9 Sec. 7. . . . [Any order entered by
10 the Commissioner . . . may be appealed
11 under Article 1.04 of this code.] Either
12 party to said action may appeal to the
13 Appellate Court having jurisdiction of said
14 cause and said appeal shall be at once
15 returnable to said Appellate Court having
16 jurisdiction of said cause and said action
17 so appealed shall have precedence in said
18 Appellate Court over all causes of a
19 different character therein pending.

20 Revised Law

21 Sec. 441.206. EX PARTE MEETING WITH COMMISSIONER.
22 Notwithstanding any other law, the commissioner may, at the time of
23 any proceeding or while a proceeding is pending under this chapter,
24 meet with a supervisor or conservator appointed under this chapter
25 and with the attorney or other representative of the supervisor or
26 conservator, without another person present, to implement the
27 commissioner's duties under this chapter or for the supervisor or
28 conservator to implement that person's duties under this chapter.
29 (V.T.I.C. Art. 21.28-A, Sec. 12(b).)

30 Source Law

31 (b) Notwithstanding any other provision of law,
32 the Commissioner may meet with a supervisor or
33 conservator appointed under this Article and with the
34 attorney or other representative of the supervisor or
35 conservator, without the presence of any other person,
36 at the time of any proceeding or during the pendency of
37 any proceeding held under authority of this Article to
38 carry out his duties under this Article or for the
39 supervisor or conservator to carry out his duties
40 under this Article.

41 Revised Law

42 Sec. 441.207. INSURER EMPLOYEES DURING SUPERVISION OR
43 CONSERVATORSHIP. (a) Notwithstanding any other provision of this

1 chapter, an insurer may employ an attorney, actuary, and accountant
2 of the insurer's choice to assist the insurer during supervision.
3 The supervisor shall authorize payment from the insurer for the
4 reasonable fees and expenses of the attorney, actuary, or
5 accountant.

6 (b) The supervisor, conservator, or commissioner shall, to
7 the maximum extent possible, use the insurer's employees instead of
8 outside consultants, actuaries, attorneys, accountants, and other
9 personnel or department employees to minimize the expense of
10 rehabilitation or the necessity of fees to cover the cost of
11 rehabilitation. (V.T.I.C. Art. 21.28-A, Secs. 13, 17(a) (part).)

12 Source Law

13 Sec. 13. (a) Notwithstanding any other
14 provision of this article, during a supervision
15 proceeding, the insurer may employ an attorney,
16 actuary, and accountant of the insurer's choice to
17 assist the insurer during the supervision.

18 (b) The supervisor shall authorize the payment
19 of reasonable fees and expenses from the insurer for
20 the attorney, actuary, or accountant.

21 Sec. 17. (a) . . . The supervisor, conservator,
22 or commissioner shall use the employees of the entity
23 being rehabilitated, to the maximum extent possible,
24 instead of outside consultants, actuaries, attorneys,
25 accountants, other personnel or departmental
26 employees, in order to minimize the expense of
27 rehabilitation or the necessity of fees for
28 rehabilitation.

29 [Sections 441.208-441.250 reserved for expansion]

30 SUBCHAPTER F. OUT-OF-STATE INSURERS

31 Revised Law

32 Sec. 441.251. APPLICABILITY. This chapter applies to an
33 insurer engaged in the business of insurance in this state but not
34 domiciled in this state, regardless of whether the insurer is
35 authorized to engage in the business of insurance in this state.
36 (V.T.I.C. Art. 21.28-A, Sec. 6 (part).)

37 Source Law

38 Sec. 6. This Article shall apply to insurance
39 companies doing an insurance business but not
40 domiciled in the State of Texas, whether authorized to
41 do business in this state or not. . . .

Revised Law

Sec. 441.252. APPOINTMENT OF ANCILLARY SUPERVISOR OR CONSERVATOR. (a) The commissioner may appoint an ancillary supervisor or ancillary conservator for the assets located in this state of an insurer described by Section 441.251 in the same manner as the commissioner appoints a supervisor or conservator for an insurer domiciled in this state as provided by this chapter if:

(1) the commissioner makes a determination described by Section 441.053 with regard to the insurer;

(2) the commissioner determines that the insurer does not have the minimum surplus, capital, or capital stock required by this code for similar domestic insurers; or

(3) the insurer agrees to the appointment.

(b) Subject to Section 441.205, the commissioner may immediately, without prior notice and hearing, appoint an ancillary conservator for the assets, property, books, and records located in this state of an insurer described by Section 441.251 if a conservator, rehabilitator, receiver, liquidator, or equivalent official is appointed in the state in which the insurer is domiciled. (V.T.I.C. Art. 21.28-A, Secs. 2 (part), (d), 6 (part).)

Source Law

Sec. 2. As used in this Article, the following words, terms and phrases . . . include the meanings, significance or application described in this Section, except as another meaning is clearly requisite from the purposes or is otherwise clearly indicated by the context.

(d) "Consent," as used in this Act, includes and means agreement to either supervision or conservatorship by the insurance company.

Sec. 6. . . . In the event that the Commissioner of Insurance makes any of the findings provided for in Section 3 of this Article concerning any such insurance company or finds that any such insurance company is not possessed of the minimum surplus or capital or capital stock required by the Insurance Code of the State of Texas for similar type domestic companies, or if the insurance company gives its consent as defined herein, the Commissioner of Insurance shall have the same power and jurisdiction to appoint an ancillary supervisor or ancillary conservator as to the assets of such out of state insurer located in this state as provided herein for domestic insurance companies. . . . In addition, if a

1 conservator, rehabilitator, receiver, or liquidator
2 or his equivalent has been appointed in the state of
3 domicile with respect to the insurance company, the
4 Commissioner of Insurance in his discretion may
5 immediately and without prior notice and hearing
6 appoint an ancillary conservator for the assets,
7 property, and books and records of the out of state
8 insurer located in this state subject to Section 7 of
9 this Article. . . .

10 Revisor's Note

11 (1) Section 2, V.T.I.C. Article 21.28-A,
12 provides that the terms and phrases in that section
13 have certain meanings for purposes of Article 21.28-A,
14 "except as another meaning is clearly requisite from
15 the purposes or is otherwise clearly indicated by the
16 context." Section 2(d), Article 21.28-A, defines
17 "consent" by providing that the term "means and
18 includes" agreement to certain specified actions. The
19 revised law incorporates the substance of the
20 definition into the revised law derived from Section
21 6, Article 21.28-A, and omits the quoted exception and
22 the reference to "includes" for the reason stated in
23 Revisor's Note (1) to Section 441.053.

24 (2) Section 6, V.T.I.C. Article 21.28-A,
25 provides that the commissioner of insurance may take
26 certain actions "subject to Section 7 of this
27 Article." The relevant part of Section 7, Article
28 21.28-A, is revised in this chapter as Section
29 441.205. The revised law is drafted accordingly.

30 Revised Law

31 Sec. 441.253. POWERS AND DUTIES OF ANCILLARY SUPERVISOR OR
32 CONSERVATOR. (a) An ancillary supervisor or ancillary conservator
33 appointed under this subchapter has all the powers provided by
34 Sections 441.153 and 441.155 with respect to the insurer's assets,
35 property, books, and records located in this state.

36 (b) An ancillary conservator appointed under this
37 subchapter may:

38 (1) reinsure all or part of the insurer's policies or

1 certificates in this state with a solvent insurer authorized to
2 engage in business in this state; and

3 (2) transfer to the reinsurer as reserves any assets
4 in the ancillary conservator's possession in an amount sufficient
5 to reinsure the policies or certificates.

6 (c) A transfer of assets under this section is not
7 considered a preference of a creditor. (V.T.I.C. Art. 21.28-A,
8 Sec. 6 (part).)

9 Source Law

10 Sec. 6. . . . Any ancillary supervisor or
11 ancillary conservator appointed with respect to
12 assets, property, and books and records located in
13 this state belonging to an out of state insurance
14 company shall have all of the powers and authority
15 provided for in Section 5 of this Article with respect
16 to such assets, property, and books and records
17 located in this state and, in addition, any ancillary
18 conservator so appointed may reinsure all or any part
19 of such insurance company's policyholders or
20 certificate holders located within this state with
21 some solvent insurance company authorized to transact
22 business in this state and may transfer to the
23 reinsuring company, as reserve funds, assets or any
24 portion thereof in his possession as may be required to
25 consummate the reinsurance of such policies and any of
26 such assets transferred as reserve funds shall not be
27 deemed a preference of creditors. . . .

28 Revisor's Note

29 (1) Section 6, V.T.I.C. Article 21.28-A, refers
30 to the "powers and authority" of an ancillary
31 supervisor or conservator. The revised law omits as
32 unnecessary the reference to "authority" because, in
33 context, "authority" is included within the meaning of
34 "powers."

35 (2) Section 6, V.T.I.C. Article 21.28-A,
36 authorizes an ancillary conservator to reinsure all or
37 part of an insurer's "policyholders or certificate
38 holders" in this state and refers to the reinsurance of
39 "such policies." The revised law substitutes
40 "policies or certificates" for "policyholders or
41 certificate holders" because policies and
42 certificates, rather than the holders of the policies

1 and certificates, are reinsured. In addition, the
2 revised law substitutes "the policies or certificates"
3 for "such policies" for clarity and consistent use of
4 terminology within this section.

5 Revised Law

6 Sec. 441.254. FAILURE TO COMPLY WITH REQUIREMENTS OF
7 SUPERVISION. The failure of an insurer described by Section
8 441.251 to comply during supervision with the requirements of
9 Section 441.104 with respect to any asset or policy located in this
10 state is grounds for the immediate revocation of the insurer's
11 certificate of authority to engage in business in this state and for
12 the immediate appointment of an ancillary conservator to take
13 charge of the insurer's assets located in this state. (V.T.I.C.
14 Art. 21.28-A, Sec. 6 (part).)

15 Source Law

16 Sec. 6. . . . In the event that any such out of
17 state insurance company shall fail to comply with the
18 provisions of Section 4 of this Article with respect to
19 any of its assets or policies located within this state
20 during any period of supervision, such act or
21 violation shall constitute sufficient grounds for the
22 immediate revocation of its certificate of authority
23 to do business in this state and for the immediate
24 appointment of an ancillary conservator to take charge
25 of its assets located within this state. . . .

26 Revised Law

27 Sec. 441.255. REFERRAL FOR REMEDIAL ACTION. The
28 commissioner may refer an insurer described by Section 441.251 to
29 the attorney general for remedial action, including application for
30 appointment of a receiver under Chapter 442, on any grounds on which
31 an insurer domiciled in this state may be referred to the attorney
32 general for remedial action. The commissioner may refer the
33 insurer at any time, and action against the insurer in the insurer's
34 state of domicile is not a prerequisite. (V.T.I.C. Art. 21.28-A,
35 Sec. 6 (part).)

36 Source Law

37 Sec. 6. . . . The Commissioner of Insurance,
38 on any grounds permitting referral to the Attorney
39 General for remedial action against a domestic
40 insurance company, may at any time and without prior

1 action having been taken in the state of domicile,
2 report an out of state insurance company for remedial
3 action including, without limitation, making
4 application for appointment of a receiver under
5 Article 21.28 of this code.

6 Revisor's Note

7 Section 6, V.T.I.C. Article 21.28-A, refers to
8 remedial action, "including, without limitation,"
9 applying for appointment of a receiver. The revised
10 law omits the reference to "without limitation" for
11 the reason stated in Revisor's Note (3) to Section
12 441.051.

13 [Sections 441.256-441.300 reserved for expansion]

14 SUBCHAPTER G. POWERS AND DUTIES OF ATTORNEY GENERAL

15 Revised Law

16 Sec. 441.301. REMEDIAL ACTION BY ATTORNEY GENERAL. (a) The
17 commissioner may, at any time and regardless of whether an insurer
18 is under supervision or conservatorship, determine that the insurer
19 is not in a condition to continue business in the interest of the
20 insurer's policyholders or certificate holders. The commissioner
21 shall give notice of that determination to the attorney general.

22 (b) On receipt of notice under Subsection (a), the attorney
23 general shall file suit in the nature of quo warranto in a court in
24 Travis County to:

25 (1) forfeit the insurer's charter; or

26 (2) require the insurer to comply with the law or prove
27 to the commissioner that the insurer is solvent, and satisfy the
28 requirement that the insurer's condition does not make the
29 continuation of the insurer's business hazardous to the public or
30 to the insurer's policyholders or certificate holders.

31 (c) The commissioner may at any time refer an insurer to the
32 attorney general for the purpose of taking any remedial action,
33 including applying for the appointment of a receiver under Chapter
34 442.

35 (d) Supervision or conservatorship of the insurer is not
36 required before the attorney general may take remedial action under

1 this section. (V.T.I.C. Art. 21.28-A, Sec. 5 (part).)

2 Source Law

3 Sec. 5. . . . If the Commissioner of Insurance
4 is satisfied at any time and regardless of the presence
5 or absence of any state of supervision or
6 conservatorship, that such insurance company is not in
7 condition to continue business in the interest of its
8 policy or certificate holders, the Commissioner of
9 Insurance shall give notice to the Attorney General
10 who shall thereupon apply to any Court in Travis
11 County, Texas, having jurisdiction thereof for leave
12 to file a suit in the nature of quo warranto to forfeit
13 the charter of such insurance company or to require it
14 to comply with the law or to satisfy the Commissioner
15 of Insurance as to its solvency, and to satisfy the
16 requirement that its condition is such as to render the
17 continuance of its business not hazardous to the
18 public or to the holders of its policies or
19 certificates of insurance. It shall be in the
20 discretion of the Commissioner of Insurance to
21 [determine at any time whether or not the insurance
22 company] . . . report it to the Attorney General for
23 the purpose of taking any remedial action including,
24 without limitation, applying for appointment of a
25 receiver under Article 21.28 of this code. No period
26 of supervision or conservatorship is necessary as a
27 prerequisite for the Attorney General to take that
28 remedial action. . . .

29 Revisor's Note

30 (1) Section 5, V.T.I.C. Article 21.28-A,
31 directs the attorney general to "apply to [a Travis
32 County court] for leave to file a suit in the nature of
33 quo warranto." Under Rules 780 and 781, Texas Rules of
34 Civil Procedure, the remedy available through a suit
35 in the nature of quo warranto is sought by filing an
36 information, as in civil actions, and the procedures
37 for the suit are the same as in civil actions. Leave
38 from the court to file the information is not required.
39 Therefore, the revised law omits the reference to the
40 attorney general applying for leave to file the suit.

41 (2) Section 5, V.T.I.C. Article 21.28-A,
42 provides that the commissioner of insurance has
43 discretion whether to place an insurer under
44 supervision or conservatorship or to take other
45 action. The revised law omits the reference to the
46 commissioner's discretion to order supervision or

1 conservatorship because that provision duplicates
2 other provisions revised in this chapter that more
3 explicitly provide for the commissioner's authority to
4 take those actions. The omitted law reads:

5 Sec. 5. . . . [It shall be in the
6 discretion of the Commissioner of Insurance
7 to] determine at any time whether or not the
8 insurance company is placed in supervision
9 or he will operate the insurance company
10 through a conservator, as provided above,
11 or

12 (3) Section 5, V.T.I.C. Article 21.28-A, refers
13 to taking remedial action, "including, without
14 limitation," applying for appointment of a receiver.
15 The revised law omits the reference to "without
16 limitation" for the reason stated in Revisor's Note (3)
17 to Section 441.051.

18 Revised Law

19 Sec. 441.302. FORFEITURE AND CANCELLATION OF CHARTER ON
20 CONCLUSION OF BUSINESS. (a) Once all an insurer's policies are
21 reinsured or terminated and the insurer's affairs are concluded as
22 provided by this chapter, the commissioner shall report that fact
23 to the attorney general. On receipt of the report, the attorney
24 general shall take action necessary to forfeit or cancel the
25 insurer's charter.

26 (b) The commissioner shall report to the attorney general
27 the commissioner's approval of the merger or consolidation of an
28 insurer with another insurer or the reinsurance of the insurer's
29 policies. On receipt of the report, the attorney general shall take
30 action to forfeit or cancel the insurer's charter in the manner
31 provided for the forfeiture or cancellation of the charter of an
32 insurer that is totally reinsured or liquidated. (V.T.I.C. Art.
33 21.28-A, Sec. 5 (part).)

34 Source Law

35 Sec. 5. . . . When all the policies of an
36 insurance company are reinsured or terminated, and all
37 of its affairs concluded, as herein provided, the
38 Commissioner of Insurance shall report the same to the
39 Attorney General, who shall take such action as may be

1 necessary to effect the forfeiture or cancellation of
2 the charter of the insurance company so reinsured and
3 liquidated. Where the Commissioner of Insurance lends
4 his approval to the merger, consolidation or
5 reinsurance of all the policies of one insurance
6 company with that of another, the same shall be
7 reported to the Attorney General who shall proceed to
8 effect the forfeiture or cancellation of the charter
9 of the insurance company from which the policies were
10 merged, consolidated or reinsured, in the same manner
11 as is provided for the charters of companies totally
12 reinsured or liquidated. . . .

13 [Sections 441.303-441.350 reserved for expansion]

14 SUBCHAPTER H. AGENTS OF RECORD FOR CERTAIN INSURED

15 Revised Law

16 Sec. 441.351. AGENTS OF RECORD. (a) Unless otherwise
17 prohibited, the supervisor, conservator, or receiver of an insurer
18 shall provide to the insured's agent of record a copy of each
19 communication provided to an insured if, in the judgment of the
20 supervisor, conservator, or receiver, providing the copy will serve
21 to materially protect the interests of policyholders. The
22 supervisor, conservator, or receiver may also request the
23 assistance of any statewide association of insurance agents in
24 providing to the association's members information that, in the
25 judgment of the supervisor, conservator, or receiver, may serve to
26 materially protect policyholders' interests.

27 (b) If the supervisor, conservator, or receiver sells a
28 delinquent insurer's policies to another insurer, the purchaser
29 shall:

30 (1) recognize the pecuniary interest of the agent of
31 record in the policies being sold, regardless of whether the
32 purchaser customarily conducts the purchaser's business through
33 insurance agents;

34 (2) conduct the purchaser's business with the insured
35 through the agent of record; and

36 (3) provide to the agent of record a written limited
37 agency contract providing the terms that apply to the conduct of
38 their business together.

39 (c) A limited agency contract provided under Subsection (b)
40 must provide a level of commission that is reasonable, adequate,

1 and nonconfiscatory.

2 (d) This subchapter does not prohibit the agent of record
3 from renewing with another insurer an insurance policy purchased by
4 an insurer from a delinquent insurer.

5 (e) This section does not apply to:

6 (1) a life, accident, or health insurance policy or
7 contract delivered or issued for delivery by an insurer that is
8 subject to any provision of a law specified in Section 841.002 or
9 any provision of Chapter 882, 884, 887, 888, or 982;

10 (2) a contract or certificate delivered or issued for
11 delivery by a group hospital service corporation organized under
12 Chapter 842; or

13 (3) a contract or evidence of coverage delivered or
14 issued for delivery by a health maintenance organization operating
15 under a certificate of authority issued under Chapter 843.
16 (V.T.I.C. Art. 21.28-A, Sec. 4A.)

17 Source Law

18 Sec. 4A. (a) Unless otherwise prohibited, the
19 supervisor, conservator, or receiver shall furnish the
20 agent of record with a copy of each communication
21 provided to the insured, if in the judgment of the
22 supervisor, conservator, or receiver, furnishing such
23 copy will serve to materially protect the interests of
24 policyholders. The supervisor, conservator, or
25 receiver may also request the assistance of any
26 statewide associations of insurance agents to furnish
27 their members with information that in the judgment of
28 the supervisor, conservator, or receiver may serve to
29 materially protect the interests of policyholders.

30 (b) In the event the supervisor, conservator, or
31 receiver sells the insurance policies of a delinquent
32 insurer to another insurer, the pecuniary interest of
33 the agent of record in the insurance policies being
34 sold shall be recognized by the purchaser, whether or
35 not the purchaser customarily conducts its business
36 through insurance agents.

37 (c) The insurer purchasing such insurance
38 policies shall conduct its business with the insured
39 through the agent of record and shall furnish the agent
40 of record with a written limited agency contract
41 providing for the terms and conditions that shall
42 serve to guide the conduct of their business together.
43 Such limited agency contract shall provide a level of
44 commission that shall be reasonable, adequate, and
45 nonconfiscatory.

46 (d) Nothing contained in this Act shall be
47 construed to prohibit the agent of record from
48 renewing insurance policies purchased by the insurer
49 from a delinquent insurer with another insurer.

50 (e) This section does not apply to:

- (1) any life, accident, or health insurance policy or contract delivered or issued for delivery by an insurer that is subject to any provision of Chapter 3, 11, 14, or 22 of this code;
- (2) any contract or certificate that is delivered or issued for delivery by a group hospital service corporation organized under Chapter 20 of this code; or
- (3) any contract or evidence of coverage delivered or issued for delivery by a health maintenance organization operating under a certificate of authority issued under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

Revisor's Note

Section 4A(c), V.T.I.C. Article 21.28-A, refers to the "terms and conditions" of a contract. The revised law omits as unnecessary the reference to "conditions" because, in context, "conditions" is included within the meaning of "terms."

CHAPTER 442. LIQUIDATION, REHABILITATION, REORGANIZATION, OR CONSERVATION OF INSURERS

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23	Sec. 442.001.	DEFINITIONS. (a) In this chapter:
24	(1)	"Assets" means all property, whether specifically
25	mortgaged, pledged, deposited, or otherwise encumbered for the	
26	security or benefit of specified persons or a limited class or	
27	classes of persons. The term includes all deposits and funds of a	
28	special or trust nature.	
29	(2)	"Delinquency proceeding" means a proceeding
30	initiated in a court of this state against an insurer to liquidate,	
31	rehabilitate, reorganize, or conserve the insurer.	
32	(3)	"Insurer" means any organization, corporation, or
33	person that engages in the business of insurance, other than an	
34	organization, corporation, or person that is specifically made	

1 exempt from the application of this chapter by another statute that
2 references this chapter. The term includes:

3 (A) a capital stock company;
4 (B) a reciprocal or interinsurance exchange;
5 (C) a Lloyd's plan;
6 (D) a fraternal benefit society;
7 (E) a mutual or mutual assessment company of any
8 kind, including:

9 (i) a statewide mutual assessment company;
10 (ii) a local mutual aid association;
11 (iii) a burial association;
12 (iv) a county mutual insurance company; and
13 (v) a farm mutual insurance company; and
14 (F) a fidelity, guaranty, or surety company.

15 (4) "Person" means an individual, association,
16 corporation, partnership, or other private legal entity.

17 (5) "Receiver" means a person appointed to act as
18 receiver under Section 442.051. The term includes the commissioner
19 or a person appointed by the commissioner to act as special deputy
20 receiver.

21 (b) For purposes of this chapter, "court" means the court in
22 which a delinquency proceeding is pending, unless the context
23 clearly indicates otherwise. (V.T.I.C. Art. 21.28, Secs. 1(a)
24 (part), (b), (c), (d), (f), (g); New.)

25 Source Law

26 Art. 21.28

27 Sec. 1. For the purposes of this Article:

28 (a) "Insurer" means and includes capital
29 stock companies, reciprocal or interinsurance
30 exchanges, Lloyd's associations, fraternal benefit
31 societies, mutual and mutual assessment companies of
32 all kinds and types, state-wide assessment
33 associations, local mutual aids, burial associations,
34 county and farm mutual associations, fidelity,
35 guaranty and surety companies, . . . all other
36 organizations, corporations, or persons transacting
37 an insurance business, unless such insurers are by
38 statute specifically, by naming this Article, exempted
39 from the operation of this Article.

40 (b) "Delinquency proceeding" means any
41 proceeding commenced in any court of this State
42 against an insurer for the purpose of liquidating,

1 rehabilitating, reorganizing or conserving such
2 insurer.

3 (c) "Assets" means all property, real or
4 personal, whether specifically mortgaged, pledged,
5 deposited, or otherwise encumbered for the security or
6 benefit of specified persons, or a limited class or
7 classes of persons. The word "assets," as used in this
8 Article, includes all deposits and funds of a special
9 or trust nature.

10 (d) "Liquidator" means "receiver." The
11 term includes the commissioner of insurance or the
12 person designated by the commissioner of insurance to
13 act as special deputy receiver.

14 (f) "Court," unless the same clearly
15 appears to the contrary from the text of this article,
16 means the court in which the delinquency proceeding is
17 pending.

18 (g) "Person" means an individual,
19 association, corporation, partnership, or other
20 private legal entity.

21 Revisor's Note

22 (1) Section 1(a), V.T.I.C. Article 21.28,
23 refers to "Lloyd's associations," "state-wide
24 assessment associations," "local mutual aids," and
25 "county and farm mutual associations," meaning
26 entities operating under Chapter 941, 881, 886, 912,
27 or 911, respectively, of this code. The terms most
28 frequently used to refer to those entities are "Lloyd's
29 plan," "statewide mutual assessment company," "local
30 mutual aid association," "county mutual insurance
31 company," and "farm mutual insurance company." For
32 consistent use of terminology in this code, the
33 revised law substitutes "Lloyd's plan," "statewide
34 mutual assessment company," "local mutual aid
35 association," "county mutual insurance company," and
36 "farm mutual insurance company" for "Lloyd's
37 associations," "state-wide assessment associations,"
38 "local mutual aids," and "county and farm mutual
39 associations," respectively.

40 (2) Section 1(a), V.T.I.C. Article 21.28,
41 defines "insurer" to include "trust companies
42 organized under the provisions of Chapter 7 of Texas
43 Insurance Code of 1951." The revised law omits the

1 reference to "trust companies" because Section 1,
2 Chapter 388, Acts of the 55th Legislature, Regular
3 Session, 1957, repealed Chapter 7. The remainder of
4 Chapter 388 enacted new requirements applicable to the
5 creation and organization of trust companies, some of
6 which were added to Vernon's Texas Civil Statutes as
7 Article 1513a. That article was repealed by Chapter
8 168, Acts of the 70th Legislature, Regular Session,
9 1987, which added the substance of Article 1513a to the
10 law on the organization of trust companies contained
11 in Chapter XI, The Texas Banking Code of 1943 (Article
12 342-1101 et seq., Vernon's Texas Civil Statutes). That
13 chapter was repealed by Chapter 769, Acts of the 75th
14 Legislature, Regular Session, 1997, which enacted the
15 Texas Trust Company Act (Article 342a-1.001 et seq.,
16 Vernon's Texas Civil Statutes). That act was codified
17 as Subtitle F, Title 3, Finance Code, by Chapter 62,
18 Acts of the 76th Legislature, Regular Session, 1999.
19 To the extent that any trust companies organized under
20 Chapter 7 of this code still exist and operate as
21 insurers, they are included in the reference under
22 Subdivision (3) of the revised law to "any
23 organization, corporation, or person that engages in
24 the business of insurance." The omitted law reads:

25 (a) . . . trust companies
26 organized under the provisions of Chapter 7
27 of Texas Insurance Code of 1951,
28 and

29 (3) Section 1(c), V.T.I.C. Article 21.28,
30 defines "assets" to mean "all property, real or
31 personal." Throughout this chapter, references to
32 "real or personal" are omitted from the revised law in
33 this context because under Section 311.005(4),
34 Government Code (Code Construction Act), "property"
35 includes both real and personal property. That

1 definition applies to the revised law.

2 (4) Section 1(d), V.T.I.C. Article 21.28,
3 defines "liquidator" to mean "receiver" and provides
4 that the term includes the commissioner of insurance
5 or the person "designated" by the commissioner to act
6 as special deputy receiver. Former Section 12,
7 V.T.I.C. Article 21.28, provided for the appointment
8 of a liquidator by the State Board of Insurance, and
9 former Section 2 of that article required the
10 liquidator to act as receiver if a court found that a
11 receiver should take charge of the assets of an
12 insurer. Chapter 12, Acts of the 72nd Legislature, 2nd
13 Called Session, 1991, amended Article 21.28 to require
14 the commissioner of insurance or a person designated
15 by the commissioner to act as receiver if a court finds
16 that a receiver should take charge of the assets of an
17 insurer and to authorize the commissioner to appoint
18 one or more special deputy receivers to act as receiver
19 for the commissioner. Because the position of
20 liquidator within the Texas Department of Insurance
21 has effectively been abolished, the terms "liquidator"
22 and "receiver" are synonymous, and the source law for
23 this chapter generally uses the term "receiver" rather
24 than "liquidator," the revised law defines the term
25 "receiver" and substitutes "receiver" for
26 "liquidator" throughout this chapter. In addition,
27 for the convenience of the reader the revised law
28 defines "receiver" to mean a person appointed to act as
29 receiver under Section 442.051 because the substantive
30 duty giving rise to the defined term is imposed by that
31 section. Finally, throughout this chapter the revised
32 law substitutes "appointed" for "designated" in the
33 context of the selection of a special deputy receiver
34 by the commissioner for consistency in use of

1 terminology.

2 (5) Section 1(e), V.T.I.C. Article 21.28,
3 defines "board" as the State Board of Insurance of the
4 State of Texas or the commissioner of insurance, as
5 applicable. Chapter 685, Acts of the 73rd
6 Legislature, Regular Session, 1993, abolished the
7 State Board of Insurance and transferred its functions
8 to the commissioner of insurance and the Texas
9 Department of Insurance. Throughout this chapter,
10 references to the board have been changed
11 appropriately. For this reason, the revised law omits
12 the definition of "board." The omitted law reads:

13 (e) "Board" means the State
14 Board of Insurance of the State of Texas, or
15 the Commissioner of Insurance as applicable
16 under Article 1.02 of this code.

17 Revised Law

18 Sec. 442.002. LIQUIDATION OVERSIGHT DIVISION EMPLOYEES.
19 The employees of the commissioner acting as receiver are employees
20 of the department for the purposes of:

21 (1) reporting payroll information to the uniform
22 statewide accounting system; and

23 (2) submitting vouchers to the comptroller for the
24 payment of the employees' salaries. (V.T.I.C. Art. 21.28, Sec.
25 12A(b).)

26 Source Law

27 (b) The Liquidator and the employees working for
28 the Liquidator or in the liquidation division of the
29 State Board of Insurance are employees of the State
30 Board of Insurance for the purpose of:

31 (1) reporting payroll information to the
32 uniform statewide accounting system; and

33 (2) submitting vouchers to the comptroller
34 for the payment of the salaries of the Liquidator and
35 the employees.

36 Revisor's Note

37 Section 12A(b), V.T.I.C. Article 21.28, provides
38 that the liquidator and the employees working for the
39 liquidator or in the liquidation division of the State

1 Board of Insurance, meaning the Texas Department of
2 Insurance, are employees of the department for certain
3 purposes. As explained in Revisor's Note (4) to
4 Section 442.001, Chapter 12, Acts of the 72nd
5 Legislature, 2nd Called Session, 1991, abolished the
6 position of liquidator within the department. The
7 commissioner of insurance or a special deputy receiver
8 appointed by the commissioner acts as a receiver and
9 performs the functions formerly performed by the
10 liquidator. In general, the revised law codifies
11 "liquidator" as "receiver." However, unlike the former
12 liquidator, neither the commissioner nor the special
13 deputy receivers appointed by the commissioner are
14 department employees for any purpose, including those
15 enumerated by Section 12A(b). The commissioner is an
16 officer appointed by the governor with the advice and
17 consent of the senate under Subchapter B, Chapter 31,
18 of this code, and a special deputy receiver is
19 appointed by the commissioner under contract under
20 Section 2(a), Article 21.28, revised in pertinent part
21 in this chapter as Section 442.051, and is therefore an
22 independent contractor. Furthermore, the liquidation
23 division of the department has been redesignated as
24 the liquidation oversight division. Accordingly, the
25 revised law substitutes a reference to the employees
26 of the commissioner in the commissioner's role as
27 receiver for the reference to the liquidator and the
28 employees working for the liquidator or in the
29 liquidation division.

30 Revised Law

31 Sec. 442.003. OVERSIGHT OF SPECIAL DEPUTY RECEIVERS AND
32 GUARANTY ASSOCIATIONS. The commissioner shall oversee special
33 deputy receivers and guaranty associations. (V.T.I.C. Art. 21.28,
34 Sec. 2(a) (part).)

1 Source Law

2 (a) It is the intent of the legislature
3 that oversight of the special deputy receivers and
4 guaranty associations shall be conducted by the
5 commissioner.

6 Revisor's Note

7 Section 2(a), V.T.I.C. Article 21.28, provides
8 that "[i]t is the intent of the legislature" that
9 oversight of certain persons and entities be conducted
10 by the commissioner of insurance. The revised law
11 omits the quoted language as unnecessary because it is
12 implied that a statute expresses the intent of the
13 legislature.

14 Revised Law

15 Sec. 442.004. CONFLICT WITH OTHER LAW. If this chapter
16 conflicts with any other law, this chapter prevails. (V.T.I.C.
17 Art. 21.28, Secs. 12A(a-1) (part), 16 (part).)

18 Source Law

19 Sec. 12A. (a-1) [The provisions of this Act are
20 cumulative of existing law and] in the event of
21 conflict the provisions of this Act shall govern.

22 Sec. 16. In the event of conflict between the
23 provisions of this Article and the provisions of any
24 existing law, the provisions of this Article shall
25 prevail,

26 Revisor's Note
27 (End of Subchapter)

28 Section 12A(a-1), V.T.I.C. Article 21.28,
29 provides that "this Act," meaning Chapter 661, Acts of
30 the 59th Legislature, Regular Session, 1965, which
31 amended V.T.I.C. Article 21.28 by adding Section 12A,
32 is cumulative of existing law. Similarly, Section 16,
33 V.T.I.C. Article 21.28, provides that in the event of a
34 conflict between a provision of Article 21.28 and a
35 provision of any existing law, all laws in conflict
36 with Article 21.28 are repealed to the extent of the
37 conflict. The revised law omits those provisions as
38 unnecessary. An accepted general principle of

1 statutory construction requires a statute to be given
2 cumulative effect with other statutes unless it
3 provides otherwise or unless the statutes are in
4 conflict. In addition, under general rules of
5 statutory construction, a statute automatically has
6 the effect of repealing prior conflicting enactments.

7 The omitted law reads:

8 Sec. 12A. (a-1) The provisions of
9 this Act are cumulative of existing law and
10

11 Sec. 16. . . . and all laws, or parts
12 of law, in conflict with the provisions of
13 this Article, are hereby repealed to the
14 extent of such conflict.

15 [Sections 442.005-442.050 reserved for expansion]

16 SUBCHAPTER B. GENERAL PROVISIONS REGARDING RECEIVER

17 Revised Law

18 Sec. 442.051. RECEIVER. If, under a law of this state, a
19 court of competent jurisdiction finds that a receiver should take
20 charge of the assets of an insurer domiciled in this state, the
21 commissioner or a person appointed as a special deputy receiver by
22 the commissioner under a contract shall act as receiver. (V.T.I.C.
23 Art. 21.28, Sec. 2(a) (part).)

24 Source Law

25 Sec. 2. (a) Receiver Taking Charge;
26 Commissioner and Powers and Duties. Whenever under
27 the law of this State a court of competent jurisdiction
28 finds that a receiver should take charge of the assets
29 of an insurer domiciled in this State, the
30 commissioner of insurance or a person designated by
31 the commissioner under contract shall act as receiver.
32 . . .

33 Revised Law

34 Sec. 442.052. APPOINTMENT OF SPECIAL DEPUTY RECEIVER. (a)
35 The commissioner may appoint, set the compensation of, and contract
36 with one or more qualified special deputy receivers to act for the
37 commissioner under this code.

38 (b) The commissioner shall:

39 (1) specify requirements for the position of special
40 deputy receiver; and

1 (2) use a competitive bidding process to select
2 special deputy receivers.

3 (c) In making an appointment under this section, the
4 commissioner shall attempt to reflect the ethnic, racial, and
5 geographic diversity of the state.

6 (d) A special deputy receiver serves at the pleasure of the
7 commissioner. (V.T.I.C. Art. 21.28, Secs. 2(a) (part), 12(b)
8 (part), (h) (part).)

9 Source Law

10 [Sec. 2]

11 (a) . . . The commissioner shall use a
12 competitive bidding process in the selection of
13 special deputy receivers and shall establish
14 specifications for the position of special deputy
15 receiver. . . .

16 [Sec. 12]

17 (b) Appointments, Expenses. The commissioner
18 may appoint, set the compensation of, and contract
19 with one or more qualified special deputy receivers to
20 act for the commissioner under this code. In making an
21 appointment under this section, the commissioner shall
22 attempt to reflect the ethnic, racial, and geographic
23 diversity of the state. . . .

24 (h) Authority of Special Deputy Receiver. A
25 special deputy receiver appointed by the commissioner
26 serves at the pleasure of the commissioner. . . .

27 Revised Law

28 Sec. 442.053. PERFORMANCE BOND REQUIRED. A special deputy
29 receiver must file with the commissioner a bond that is:

30 (1) in an amount established by the commissioner;

31 (2) payable to the commissioner for the benefit of
32 injured parties; and

33 (3) conditioned on:

34 (A) the faithful performance of the special
35 deputy receiver's duties; and

36 (B) the proper accounting for all money and
37 property received or administered by the special deputy receiver.
38 (V.T.I.C. Art. 21.28, Sec. 12(a).)

39 Source Law

40 Sec. 12. (a) Special Deputy Receiver, Bond. A
41 special deputy receiver appointed by the commissioner
42 under this article shall file with the commissioner a

1 bond in an amount established by the commissioner,
2 payable to the commissioner for the benefit of injured
3 parties, and conditioned on the faithful performance
4 of the special deputy receiver's duties and the proper
5 accounting for all moneys and properties received or
6 administered by the special deputy receiver.

7 Revised Law

8 Sec. 442.054. POWERS OF SPECIAL DEPUTY RECEIVER. (a)

9 Unless restricted by the commissioner, a special deputy receiver
10 has all the powers of a receiver granted under this code and may
11 perform any act on behalf of the commissioner as receiver.

12 (b) If expressly authorized by the commissioner, a special
13 deputy receiver may employ employees and agents, legal counsel,
14 actuaries, accountants, appraisers, consultants, and other
15 personnel the special deputy receiver considers necessary to assist
16 in the performance of the receiver's duties. The expenses of
17 employing those persons are expenses of the receivership payable
18 out of money or other assets of the insurer. (V.T.I.C. Art. 21.28,
19 Secs. 12(b) (part), (h) (part).)

20 Source Law

21 (b) . . . A special deputy receiver has all the
22 powers of the receiver granted by this code, unless
23 limited by the commissioner. . . .

24 (h) . . . Unless restricted by the
25 commissioner, a special deputy receiver may perform
26 any act on behalf of the commissioner. If expressly
27 authorized by the commissioner, a special deputy
28 receiver may employ employees and agents, legal
29 counsel, actuaries, accountants, appraisers,
30 consultants, and other personnel as the special deputy
31 receiver considers necessary to assist in the
32 performance of the receiver's duties. The expenses of
33 employing those persons are expenses of the
34 receivership payable out of funds or assets of the
35 insurer.

36 Revisor's Note

37 (1) Section 12(b), V.T.I.C. Article 21.28,
38 grants a special deputy receiver "all the powers of the
39 receiver granted by this code." Section 12(h)
40 provides that a special deputy receiver may perform
41 "any act on behalf of the commissioner." It is clear
42 from the context of the source law that the special
43 deputy receiver is authorized to perform on behalf of

1 the commissioner only the acts that the commissioner
2 would be authorized to perform in the commissioner's
3 role as receiver. The revised law is drafted
4 accordingly.

5 (2) Section 12(h), V.T.I.C. Article 21.28,
6 refers to "funds" of an insurer. Throughout this
7 chapter, the revised law substitutes "money" for
8 "funds" because, in this context, the terms are
9 synonymous and the former is more commonly used.

10 Revised Law

11 Sec. 442.055. RECEIVER CONSIDERED TO ACT ON BEHALF OF
12 RECEIVERSHIP ESTATE. (a) In performing the duties of receiver
13 under this chapter, the commissioner, a special deputy receiver, or
14 an agent or employee of the commissioner or special deputy receiver
15 is considered to act on behalf of the receivership estate.

16 (b) Chapter 105, Civil Practice and Remedies Code, does not
17 apply to an action taken under this chapter. (V.T.I.C. Art. 21.28,
18 Sec. 2(1).)

19 Source Law

20 (1) Actions by Receiver. When performing the
21 duties of receiver under this Article, the
22 commissioner, a special deputy receiver, or an agent
23 or employee of the commissioner, or a special deputy
24 receiver shall be considered to be acting on behalf of
25 the receivership estate, and the provisions of Chapter
26 105, Civil Practice and Remedies Code, shall not apply
27 to any actions taken pursuant to this Article.

28 Revised Law

29 Sec. 442.056. IMMUNITY. (a) The following persons are not
30 liable, and a cause of action does not arise against any of the
31 following persons, for a good faith action or failure to act in
32 exercising powers and performing duties under this chapter:

33 (1) the commissioner or an agent or employee of the
34 commissioner; or

35 (2) a special deputy receiver or an agent or employee
36 of the special deputy receiver.

37 (b) The attorney general shall defend an action to which

1 Subsection (a) applies that is brought against a person described
2 by that subsection, including an action brought after the
3 defendant's service with the commissioner, a special deputy
4 receiver, or the department has terminated, or after the close of
5 the receivership out of which the action arises. This subsection
6 does not require the attorney general to defend a person with
7 respect to an issue other than the applicability or effect of the
8 immunity provided by Subsection (a). (V.T.I.C. Art. 21.28, Secs.
9 2(j), (k).)

10 Source Law

11 (j) Immunity. There is no liability on the part
12 of, and a cause of action does not arise against, the
13 receiver, a special deputy receiver, the commissioner,
14 or an agent or employee of the receiver, a special
15 deputy receiver, or the commissioner for a good faith
16 action or failure to act in the performance of powers
17 and duties under this article.

18 (k) Representation by Attorney General. The
19 attorney general shall defend an action to which
20 Subsection (j) of this section applies that is brought
21 against the receiver, a special deputy receiver, the
22 commissioner, or an agent or employee of the receiver,
23 a special deputy receiver, or the commissioner. This
24 subsection continues to apply to an action that is
25 brought after the defendant's service with the
26 receiver, a special deputy receiver, the commissioner,
27 or the department has terminated or after the close of
28 the receivership out of which the action arises. This
29 subsection does not require the attorney general to
30 defend any person with respect to an issue other than
31 the applicability or effect of the judicial immunity
32 codified by Subsection (j) of this section.

33 Revisor's Note

34 (1) Sections 2(j) and (k), V.T.I.C. Article
35 21.28, refer to "the receiver," "a special deputy
36 receiver," and "the commissioner." The revised law
37 omits the references to "receiver" as unnecessary
38 because under Section 2(a), V.T.I.C. Article 21.28,
39 revised in pertinent part in this chapter as Section
40 442.051, only the commissioner or a person appointed
41 as a special deputy receiver may act as receiver.

42 (2) Section 2(k), V.T.I.C. Article 21.28,
43 refers to the "judicial immunity" in Section 2(j),
44 Article 21.28, revised as Subsection (a) of this

1 section. Section 2(j) refers to "immunity" rather
2 than "judicial immunity." Accordingly, the revised
3 law substitutes "immunity" for "judicial immunity" for
4 consistency in use of terminology.

5 Revisor's Note
6 (End of Subchapter)

7 Section 2(a), V.T.I.C. Article 21.28, provides
8 that a special deputy receiver is subject to the
9 performance standards imposed by Section 2(a). The
10 revised law omits the provision subjecting the special
11 deputy receiver to those performance standards as
12 unnecessary because those provisions apply to the
13 special deputy receiver by their terms. The omitted
14 law reads:

15 (a) . . . A person designated by
16 the commissioner to act as special deputy
17 receiver under contract is subject to the
18 performance standards imposed by this
19 subsection. . . .

20 [Sections 442.057-442.100 reserved for expansion]

21 SUBCHAPTER C. CONDUCT OF DELINQUENCY PROCEEDINGS: GENERAL
22 PROVISIONS

23 Revised Law

24 Sec. 442.101. VENUE. Exclusive venue of delinquency
25 proceedings is in Travis County. (V.T.I.C. Art. 21.28, Sec. 2(i).)

26 Source Law

27 (i) Venue. Exclusive venue of delinquency
28 proceedings shall be in Travis County, Texas.

29 Revised Law

30 Sec. 442.102. RIGHTS AND LIABILITIES ESTABLISHED AS OF DATE
31 DELINQUENCY PROCEEDING BEGINS. Except as otherwise directed by the
32 court or expressly provided by this chapter, the rights and
33 liabilities of an insurer that is the subject of a delinquency
34 proceeding and of all other persons interested in the insurer's
35 estate, including the insurer's creditors, policyholders, members,
36 officers, directors, shareholders, and agents, are fixed as of the
37 date of the commencement of the delinquency proceeding, subject to

1 the provisions of Subchapter E relating to the rights of claimants
2 holding unliquidated or undetermined claims or demands. (V.T.I.C.
3 Art. 21.28, Sec. 2(c).)

4 Source Law

5 (c) Rights Fixed. The rights and liabilities of
6 any such insurer and of its creditors, policyholders,
7 members, officers, directors, stockholders, agents,
8 and all other persons interested in its estate, shall,
9 unless otherwise directed by the court, be fixed as of
10 the date of the commencement of the delinquency
11 proceedings, subject, however, to the provisions of
12 Section 3 with respect to the rights of claimants
13 holding unliquidated or undetermined claims or
14 demands, and as otherwise expressly provided in this
15 Article.

16 Revised Law

17 Sec. 442.103. TITLE TO ASSETS; PRIORITY OF RECEIVER'S
18 RIGHTS. (a) The assets of an insurer that is the subject of a
19 delinquency proceeding are in the custody of the court as of the
20 date of the commencement of the proceeding.

21 (b) The receiver is vested by operation of law with the
22 title to all of the insurer's property, contracts, and rights of
23 action, wherever located, as of the date a court order is entered
24 directing possession to be taken. The title of the receiver relates
25 back to the date of the commencement of the delinquency proceeding
26 unless the court provides otherwise.

27 (c) A contractual lien or statutory landlord's lien under
28 Chapter 54, Property Code, that arises after the date of the
29 commencement of the delinquency proceeding is secondary and
30 inferior to the rights of the receiver.

31 (d) The filing or recording of an order described by
32 Subsection (b) in any record office of the state provides the same
33 notice as would be provided by a deed, bill of sale, or other
34 evidence of title filed or recorded by the insurer. (V.T.I.C. Art.
35 21.28, Sec. 2(b).)

36 Source Law

37 (b) Title in Receiver. The property and assets
38 of such insurer shall be in the custody of the court as
39 of the date of the commencement of such delinquency
40 proceedings. The said receiver and his successors in
41 office shall be vested by operation of law with the

1 title to all of the property, contracts, and rights of
2 action of such insurer, wherever located, as of the
3 date of entry of the order directing possession to be
4 taken. Such title of the receiver shall relate back to
5 the date of the commencement of the delinquency
6 proceedings unless the court shall otherwise provide.
7 A contractual lien or statutory landlord's lien under
8 Chapter 54, Property Code, that arises after the date
9 of the commencement of the delinquency proceedings is
10 secondary and inferior to the rights of the receiver
11 and his successors in office. The filing or recording
12 of such an order in any record office of the State
13 shall impart the same notice as would be imparted by a
14 deed, bill of sale, or other evidence of title duly
15 filed or recorded by such insurer.

16 Revisor's Note

17 (1) Section 2(b), V.T.I.C. Article 21.28,
18 refers to the "property and assets" of an insurer.
19 Throughout this chapter, the reference to "property"
20 is omitted from the revised law in this context because
21 under Section 1(c), V.T.I.C. Article 21.28, revised in
22 this chapter as Section 442.001(a)(1), "assets" is
23 defined to include all property of an insurer.

24 (2) Section 2(b), V.T.I.C. Article 21.28,
25 refers to the "receiver and his successors in office."
26 The references to the receiver's "successors in
27 office" are omitted from the revised law because the
28 receiver's "successors in office" are included within
29 the meaning of "receiver."

30 (3) Section 2(b), V.T.I.C. Article 21.28,
31 refers to a deed, bill of sale, or other evidence of
32 title "duly" filed or recorded by an insurer. The
33 revised law omits "duly" as unnecessary because the
34 term does not add to the clear meaning of the law. A
35 deed, bill of sale, or other evidence of title is not
36 filed or recorded if it is not duly filed or recorded.

37 Revised Law

38 Sec. 442.104. DUTY OF RECEIVER TO TAKE POSSESSION OF
39 ASSETS; INVENTORY. (a) The receiver shall promptly take
40 possession of the assets of an insurer that is the subject of a
41 delinquency proceeding and, as the court directs, manage those

1 assets in the person's own name as receiver or in the name of the
2 insurer.

3 (b) The receiver is responsible for all assets coming into
4 the receiver's possession.

5 (c) The receiver shall promptly prepare, in duplicate, an
6 inventory of the insurer's assets. The receiver shall file one copy
7 of the inventory with the department and one copy in the office of
8 the clerk of the court. The copies of the inventory are open for
9 inspection. (V.T.I.C. Art. 21.28, Secs. 2(a) (part), (d) (part),
10 (f).)

11 Source Law

12 (a) . . . The receiver shall forthwith take
13 possession of the assets of such insurer and deal with
14 the same in the person's own name as receiver or in the
15 name of the insurer as the court may direct. . . .

16 (d) Bonds. The receiver shall be responsible
17 for all assets coming into his possession. . . .

18 (f) Inventory. An inventory in duplicate of the
19 insurer's assets shall be prepared forthwith by the
20 receiver, one of which shall be filed in the office of
21 the Board and one in the office of the clerk of the
22 court having jurisdiction, which inventories shall be
23 open to inspection.

24 Revisor's Note

25 (1) Section 2(a), V.T.I.C. Article 21.28,
26 provides that a receiver has the powers specified by
27 this code. The revised law omits that provision as
28 unnecessary. The provisions of this code that specify
29 those powers are sufficient authority for those
30 powers. The omitted law reads:

31 (a) . . . The receiver has the powers
32 specified in this code. . . .

33 (2) Section 2(f), V.T.I.C. Article 21.28,
34 refers to "the court having jurisdiction." The
35 revised law substitutes a reference to "the court"
36 because under Section 1(f), V.T.I.C. Article 21.28,
37 revised in this chapter as Section 442.001(b), for
38 purposes of this chapter "court" means the court in
39 which a delinquency proceeding is pending, unless the

1 context clearly indicates otherwise, and it is clear
2 from the context that the court to which the reference
3 is made is the court in which the delinquency
4 proceeding is pending.

5 Revised Law

6 Sec. 442.105. AUTHORITY TO REQUIRE BOND TO PROTECT ASSETS.

7 The court may require:

- 8 (1) the receiver to provide one or more bonds; and
9 (2) if considered desirable by the court for the
10 protection of the assets, a special deputy receiver or other
11 assistant or employee appointed under this chapter to provide one
12 or more bonds. (V.T.I.C. Art. 21.28, Sec. 2(d) (part).)

13 Source Law

14 (d) . . . The court may require a bond, or
15 bonds, from the said receiver, and, if deemed
16 desirable for the protection of the assets, may
17 require a bond, or bonds, of any special deputy
18 receiver, or other assistant or employee appointed by
19 or under the authority of this Article.

20 Revised Law

21 Sec. 442.106. DELIVERY OF PROPERTY AND RECORDS TO RECEIVER.

22 (a) The officers, directors, shareholders, members, trustees,
23 managing general agents, agents, administrators, claims adjusters,
24 managers, attorneys-in-fact, and associate, deputy, or substitute
25 attorneys-in-fact of a delinquent insurer shall immediately
26 deliver to the receiver, without cost to the receiver, all
27 property, books, records, accounts, documents, and other writings
28 of the delinquent insurer or that relate to the business of the
29 delinquent insurer.

30 (b) If by contract or otherwise any property, book, record,
31 account, document, or other writing is owned by a person described
32 by Subsection (a), the owner shall copy the item and deliver the
33 copy to the receiver. The owner shall retain the original until
34 notification that the item is no longer required in the
35 administration of the insurer's estate or until another time as the
36 court, after notice and hearing, directs. A copy is considered to

1 be a record of the delinquent insurer under Subchapter I. (V.T.I.C.
2 Art. 21.28, Sec. 4(e).)

3 Source Law

4 (e) Records with Third Parties. All officers,
5 directors, stockholders, members, trustees, managing
6 general agents, agents, administrators, claims
7 adjusters, managers, attorneys-in-fact, or associate,
8 deputy, or substitute attorneys-in-fact of the
9 delinquent insurer shall immediately deliver to the
10 possession of the receiver all properties, books,
11 records, accounts, documents, and other writings of
12 the delinquent insurer or that relate to the business
13 of the delinquent insurer without cost to the
14 receiver; however, if by contract or otherwise any of
15 the properties, books, records, accounts, documents,
16 and other writings belong to or are the property of
17 those persons, they shall be copied, the copy
18 delivered to the receiver, and the original retained
19 by the owner until notification that it is no longer
20 required in the administration of the insurer's estate
21 or at any other time as the court, after notice and
22 hearing, shall direct. The copies are deemed to be
23 records of the delinquent insurer under Section 11 of
24 this Article.

25 Revised Law

26 Sec. 442.107. DUTY OF RECEIVER TO CONDUCT INSURER'S
27 BUSINESS. (a) On taking possession of the assets of a delinquent
28 insurer, the receiver shall, subject to the direction of the court,
29 immediately begin conducting the insurer's business or taking any
30 steps necessary to conserve the assets and protect the rights of
31 policyholders and claimants for the purpose of liquidating,
32 rehabilitating, reinsuring, reorganizing, or conserving the
33 affairs of the insurer.

34 (b) Notwithstanding the requirements of Subsection (a) or
35 the terms of any insurance contract issued by a delinquent insurer,
36 the receiver is not required to defend any action against an insured
37 of a delinquent insurer. (V.T.I.C. Art. 21.28, Sec. 2(e).)

38 Source Law

39 (e) Conducting of Business. Upon taking
40 possession of the assets of a delinquent insurer the
41 receiver shall, subject to the direction of the court,
42 immediately proceed to conduct the business of the
43 insurer, or to take such steps as may be necessary to
44 conserve the assets and protect the rights of
45 policyholders and claimants for the purpose of
46 liquidating, rehabilitating, reinsuring, reorganizing
47 or conserving the affairs of the insurer.
48 Notwithstanding the foregoing requirements or the
49 terms of any insurance contract issued by a delinquent

insurer, the receiver is not required to defend any action against an insured of a delinquent insurer.

Revised Law

Sec. 442.108. DISPOSAL OF PROPERTY; SETTLING OF CLAIMS.

(a) Except as provided by Subsection (b), the receiver may, subject to the approval of the court:

(1) sell or otherwise dispose of all or part of the property of an insurer against whom a delinquency proceeding has been brought; and

(2) sell or compound all doubtful or uncollectible debts, or claims owed by or to the insurer, including claims based on an assessment levied against a member of a mutual insurer, a reciprocal or interinsurance exchange, or a Lloyd's plan.

(b) Without obtaining the approval of the court, the receiver may compromise or compound a debt or claim described by Subsection (a)(2) or sell an item of the insurer's property on terms the receiver considers to be in the best interest of the insurer if the amount of the debt or claim or the value of the item of property does not exceed \$10,000, excluding interest.

(c) The receiver may, subject to the approval of the court, sell, agree to sell, or offer to sell any assets of the insurer to creditors of the insurer who seek to participate in the purchase of the assets, to be paid for wholly or partly out of dividends payable to those creditors. On application of the receiver, the court may designate representatives to act for those creditors in purchasing, holding, or otherwise managing those assets, and the receiver may, subject to the approval of the court, advance the expenses of those representatives against the security of the claims of those creditors.

(d) The receiver may, subject to the approval of the court and the commissioner, as required by this code, sell or otherwise dispose of the charter or certificate of authority of the insurer separately from the outstanding liabilities of the insurer.

(V.T.I.C. Art. 21.28, Sec. 2(g).)

1 "reciprocal or interinsurance exchange" and "Lloyd's
2 plan." For consistent use of terminology in this code,
3 the revised law substitutes "reciprocal or
4 interinsurance exchange" and "Lloyd's plan" for
5 "reciprocal exchange" and "underwriter at Lloyds,"
6 respectively.

7 (3) Section 2(g), V.T.I.C. Article 21.28,
8 refers to the sale or other disposal of the "license"
9 of an insurer. The revised law substitutes
10 "certificate of authority" for "license" because
11 "certificate of authority" is the term used throughout
12 this code in relation to an entity's authority to
13 engage in business.

14 (4) Section 2(g), V.T.I.C. Article 21.28,
15 refers to "separate and apart." The reference to
16 "apart" is omitted from the revised law because
17 "apart" is included within the meaning of "separate."

18 Revised Law

19 Sec. 442.109. BORROWING ON PLEDGE OF ASSETS. (a) To
20 facilitate the rehabilitation, liquidation, conservation, or
21 dissolution of an insurer under this chapter, the receiver may,
22 subject to the approval of the court:

23 (1) borrow money;

24 (2) execute, acknowledge, and deliver a note or other
25 evidence of indebtedness for the loan;

26 (3) secure the repayment of the loan by the mortgage,
27 pledge, assignment, or transfer in trust of any or all of the
28 insurer's property; and

29 (4) take any other action necessary and proper to
30 obtain and provide for the repayment of the loan.

31 (b) The receiver is not under any obligation in the person's
32 personal capacity or official capacity as receiver to repay any
33 loan made under this section. (V.T.I.C. Art. 21.28, Sec. 15.)

Source Law

Sec. 15. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this Article the receiver may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the receiver, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The receiver shall be under no obligation personally or in his official capacity as receiver to repay any loan made pursuant to this section.

Revisor's Note

(1) Section 15, V.T.I.C. Article 21.28, refers to the "pledge" or "hypothecation" of property. The revised law omits "hypothecation" because "hypothecation" is included within the meaning of "pledge."

(2) Section 15, V.T.I.C. Article 21.28, refers to "property whether real, personal or mixed." The revised law omits the reference to "real, personal, or mixed" because under Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, "property" includes both real and personal property, and "mixed" property is property consisting of both real and personal property.

Revised Law

Sec. 442.110. DEPOSITORIES; ACCOUNTING. (a) Except as otherwise provided by this section, the receiver shall promptly deposit all money collected into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller.

(b) If determined advantageous by the receiver in the receiver's sound financial judgment, the receiver may deposit the money in one or more banks or savings and loan associations in this state insured by a federal agency that provides for deposit

1 insurance. If the amount deposited exceeds the maximum amount
2 insured by the appropriate federal agency, the receiver shall,
3 without the need for court approval, enter into any contracts and
4 require any security the receiver considers proper to safeguard the
5 deposit.

6 (c) The receiver shall account for all money collected or
7 realized from the assets of each insurer for which the receiver has
8 been appointed separately from all other money. (V.T.I.C. Art.
9 21.28, Sec. 2(h).)

10 Source Law

11 (h) Depositories. Except as provided by this
12 subsection, all money collected by the receiver shall
13 be forthwith deposited into the Texas Treasury
14 Safekeeping Trust Company in accordance with
15 procedures established by the comptroller. The
16 receiver may deposit the money in any bank, banks, or
17 savings and loan association or associations in this
18 State insured by a federal agency that provides for
19 deposit insurance if the receiver, in the exercise of
20 sound financial judgment, determines that it would be
21 advantageous to do so. The funds collected or realized
22 from the assets of each insurer for which the receiver
23 has been appointed shall be accounted for by the
24 receiver separately from all other funds. Whenever
25 any account in a bank or savings and loan association
26 exceeds the maximum amount insured by the appropriate
27 federal agency, the receiver is hereby authorized and
28 directed to make such contracts and require such
29 security as it may deem proper for the safeguarding of
30 such deposit without approval of the court.

31 Revised Law

32 Sec. 442.111. REPORTS ON STATUS OF PROCEEDING. The
33 receiver shall:

34 (1) file with the department on the department's
35 request reports showing the operation, receipts, expenditures, and
36 general condition of any insurer of which the receiver is in charge
37 at that time;

38 (2) on request, file a copy of a report described by
39 Subdivision (1) with the court in which the receivership proceeding
40 is pending; and

41 (3) file a final report regarding each insurer that
42 has been liquidated or handled that:

43 (A) shows and fully explains all receipts and

1 expenditures; and

2 (B) accurately states the disposition of all of
3 the insurer's assets. (V.T.I.C. Art. 21.28, Sec. 12(c).)

4 Source Law

5 (c) Filing Reports. The receiver shall file
6 reports with the Board upon its request showing the
7 operation, receipts, expenditures, and general
8 condition of any organization of which the receiver
9 may have charge at that time, and, upon request, shall
10 file a copy of said report with the court in which said
11 receivership proceeding is pending. The receiver
12 shall also file a final report of each organization
13 which has been liquidated or handled showing all
14 receipts and expenditures, and giving a full
15 explanation of the same and a true statement of the
16 disposition of all of the assets of each organization.

17 Revisor's Note

18 Section 12(c), V.T.I.C. Article 21.28, requires
19 the receiver to file reports with the Texas Department
20 of Insurance showing certain information regarding an
21 "organization" of which the receiver is in charge or
22 that has been liquidated or handled. The revised law
23 substitutes "insurer" for "organization" for
24 consistency with Section 2(a), V.T.I.C. Article 21.28,
25 revised in pertinent part in this chapter as Section
26 442.051, which requires a receiver to take charge of
27 the assets of an "insurer."

28 Revised Law

29 Sec. 442.112. BUSINESS PLAN REPORTS; OTHER PERIODIC
30 REPORTS. (a) A special deputy receiver shall submit a monthly
31 written report to the court and the commissioner that states the
32 special deputy receiver's business plan for the receivership,
33 including:

34 (1) the expenses incurred in administering the
35 receivership during the preceding month and an estimate of those
36 expenses for the succeeding month;

37 (2) a cost-benefit analysis of the expenditure of
38 money other than money spent to pay claims;

39 (3) a budget of monthly expenses that explains any

1 variation from the original projection; and

2 (4) a list of any lawyers or law firms that offered to
3 represent or represented the special deputy receiver in relation to
4 the special deputy receiver's duties under this chapter, and any
5 hours billed or fees paid to a lawyer or law firm that represented
6 the special deputy receiver.

7 (b) The special deputy receiver shall submit the business
8 plan report to the attorney general quarterly, and the attorney
9 general may make recommendations to the commissioner based on the
10 report.

11 (c) In addition to the business plan report, the special
12 deputy receiver shall submit to the commissioner a monthly report
13 relating to the special deputy receiver's activities in
14 administering the receivership.

15 (d) On written application by the special deputy receiver
16 and with the approval of the commissioner, the court may suspend the
17 requirement for monthly reports, or require less frequent reports,
18 on a showing that the costs of the monthly reports exceed the
19 benefit derived from those reports. (V.T.I.C. Art. 21.28, Sec.
20 2(a) (part).)

21 Source Law

22 (a) . . . The special deputy receiver shall
23 submit monthly written reports to the court and
24 commissioner that state the special deputy receiver's
25 business plan for the receivership, including expenses
26 incurred in administering the receivership during the
27 preceding month and an estimate of those expenses for
28 the succeeding month. The report must include a
29 cost-benefit analysis on the expenditure of funds
30 other than funds spent for the payment of claims. The
31 business plan report must include a budget of monthly
32 expenses that explains any variation from the original
33 projection. The business plan report must include a
34 list of any lawyers or law firms that offered to or did
35 represent the special deputy receiver in relation to
36 its duties under this article, and any hours billed or
37 fees paid to a lawyer or law firm that represented the
38 special deputy receiver. The special deputy receiver
39 shall submit the business plan report to the attorney
40 general on a quarterly basis, and the attorney general
41 may make recommendations to the commissioner based on
42 the report. In addition to the business plan report,
43 the special deputy receiver shall submit a monthly
44 report to the commissioner relating to the special
45 deputy receiver's activities in administering the
46 receivership. Upon written application by the special

1 deputy receiver and with approval of the commissioner,
2 the court may suspend the requirement for monthly
3 reports or require reports less frequently based upon
4 a showing that the costs of such reports exceed the
5 benefit derived from their filing.

6 Revised Law

7 Sec. 442.113. REPORT TO INSURANCE FRAUD UNIT. A special
8 deputy receiver shall report to the insurance fraud unit any
9 information discovered in the administration of a receivership
10 relating to possible fraudulent, deceptive, or unlawful conduct by
11 an insurer. (V.T.I.C. Art. 21.28, Sec. 12(i).)

12 Source Law

13 (i) Reports of Fraudulent Activities. The
14 special deputy receiver shall report to the insurance
15 fraud unit any information relating to possible
16 fraudulent, deceptive, or unlawful conduct by an
17 insurer discovered in administration of the
18 receivership.

19 Revised Law

20 Sec. 442.114. PAYMENT OF LIQUIDATION EXPENSES; OBJECTION.

21 (a) The commissioner or special deputy receiver shall pay the
22 compensation of the special deputy receiver and all other expenses
23 of a liquidation out of the money or other assets of the insurer.

24 (b) Each month, the receiver shall present to the court an
25 itemized accounting, sworn to by the receiver, of the expenses. The
26 court shall approve the accounting unless a party at interest files
27 an objection on or before the 10th day after the date the accounting
28 is presented. The objection must specify each item to which the
29 party objects and the ground for that objection.

30 (c) The court shall set a hearing on an objection filed
31 under Subsection (b) and shall notify the parties of the hearing.
32 The objecting party has the burden of proof to show that an item to
33 which the party objected is improper, unnecessary, or excessive.
34 (V.T.I.C. Art. 21.28, Sec. 12(b) (part).)

35 Source Law

36 (b) [The commissioner may . . . set the
37 compensation of . . . special deputy receivers]
38 The payment of such compensation and all
39 expenses of liquidation shall be made by the
40 commissioner or special deputy receiver out of funds
41 or assets of the insurer. An itemized report of such
42 expenses, sworn to by the commissioner or a special

1 deputy receiver, shall be presented on a monthly basis
2 to the court, which account shall be approved by the
3 court unless objection is filed thereto within ten
4 (10) days after the presentation of the account. The
5 objection, if any, must be made by a party at interest
6 and shall specify the item or items objected to and the
7 ground of such objection. The court shall set the
8 objection down for hearing, notifying the parties of
9 the setting. The burden of proof shall be upon the
10 party objecting to show that the items objected to are
11 improper, unnecessary or excessive.

12 Revised Law

13 Sec. 442.115. INJUNCTIONS AND OTHER ORDERS. (a) On
14 application by the receiver, the receivership court, with or
15 without notice, may issue:

16 (1) an injunction restraining the insurer named in the
17 order, the insurer's officers, directors, shareholders, members,
18 trustees, agents, employees, policyholders, attorneys, managers,
19 attorneys-in-fact, including associate, deputy, and substitute
20 attorneys-in-fact, and all other persons from:

21 (A) engaging in the insurer's business; or

22 (B) wasting or disposing of the insurer's
23 property; or

24 (2) an order requiring the delivery of the insurer's
25 assets to the receiver.

26 (b) At any time during a delinquency proceeding, the
27 receivership court may issue an injunction or order considered
28 necessary to prevent:

29 (1) interference with the receiver or the proceeding;

30 (2) waste of the insurer's assets;

31 (3) the initiation or prosecution of an action;

32 (4) the obtaining of a preference, judgment,
33 attachment, garnishment, or other lien; or

34 (5) the making of a levy against the insurer or against
35 all or part of the insurer's assets. (V.T.I.C. Art. 21.28, Secs.
36 4(a), (b).)

37 Source Law

38 Sec. 4. (a) Injunctions. Upon an application
39 by the receiver, the receivership court may, with or
40 without notice, issue an injunction restraining the
41 insurer named in the order, its officers, directors,

1 stockholders, members, trustees, agents, servants,
2 employees, policyholders, attorneys, managers,
3 attorneys-in-fact, associate, deputy, substitute
4 attorneys-in-fact, and all other persons from the
5 transaction of its business or the waste or
6 disposition of its property, or requiring the delivery
7 of its property and/or assets to the receiver subject
8 to the further order of the court.

9 (b) Other Orders. Such court may at any time
10 during a proceeding under this Article issue such
11 other injunctions or orders as may be deemed necessary
12 to prevent interference with the receiver or the
13 proceeding, or waste of the assets of the insurer, or
14 the commencement or prosecution of any actions, or the
15 obtaining of preferences, judgments, attachments,
16 garnishments, or other liens, or the making of any levy
17 against the insurer or against its assets or any part
18 thereof.

19 Revisor's Note

20 (1) Section 4(a), V.T.I.C. Article 21.28,
21 refers to an insurer's "agents, servants, [and]
22 employees." The revised law omits the reference to
23 "servants" because "servants" is included within the
24 meaning of "agents" or "employees."

25 (2) Section 4(a), V.T.I.C. Article 21.28,
26 provides that a receivership court may issue certain
27 orders "subject to the further order of the court."
28 The revised law omits the quoted language as
29 unnecessary because an order issued by a court is
30 subject to a subsequent order of the court without an
31 express statement to that effect.

32 Revised Law

33 Sec. 442.116. EFFECT OF INJUNCTION OR ORDER: DENIAL OF
34 CLAIMS AND OTHER DEMANDS. The receiver for an insurer may deny a
35 claim, judgment, lien, preference, or demand made or obtained
36 against the insurer or the receiver after the date of receivership
37 in derogation of the terms of an injunction or order under Section
38 442.115 until:

39 (1) proof of the justness of the claim, judgment,
40 lien, preference, or demand is made before the receivership court;
41 and

42 (2) the court approves the claim, judgment, lien,
43 preference, or demand. (V.T.I.C. Art. 21.28, Sec. 4(c).)

Source Law

(c) No Preferences. Any claim, judgment, lien or preference against the insurer or its receiver obtained, after the date of receivership, in derogation of the terms of any such injunction or order of the receivership court may be denied by the receiver until proof of the justness of such claim, judgment, lien, preference or demand is made before and approved by the receivership court.

Revised Law

Sec. 442.117. OTHER PENDING ACTIONS; IMMUNITY. (a) A judgment or order of a court of this state or of another jurisdiction in an action pending by or against a delinquent insurer that is rendered after the commencement of the delinquency proceeding is not binding on the receiver unless the receiver was made a party to the action.

(b) A receiver and the receiver's agents and employees are not liable for, and a cause of action does not arise against the receiver or the receiver's agents or employees for, an act or failure to act by the person that relates to the adjustment, negotiation, or settlement of a claim. (V.T.I.C. Art. 21.28, Sec. 4(f).)

Source Law

(f) Pending Lawsuits. No judgment or order rendered by any court of this State or of any other jurisdiction in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

A receiver and his agents and employees are not liable for and a cause of action may not be brought against any of them for an action taken or not taken by them relating to the adjustment, negotiation, or settlement of claims.

Revised Law

Sec. 442.118. EXTENSION OF TIME FOR PLEADING;
INAPPLICABILITY OF CERTAIN LAWS. (a) The receiver is not required
to plead to any action in which the receiver is a proper plaintiff
or defendant in any court in this state until the first anniversary
of the date the receiver is appointed.

(b) Sections 64.033, 64.052, 64.053, and 64.056, Civil Practice and Remedies Code, do not apply to an insolvent insurer

1 being administered under this chapter. (V.T.I.C. Art. 21.28, Sec.
2 4(g).)

3 Source Law

4 (g) One Year Extension. The receiver shall not
5 be required to plead to any suit in which he may be a
6 proper party plaintiff or defendant, in any of the
7 courts in this State until one (1) year after the date
8 of his appointment as receiver, and the provisions of
9 Sections 64.033, 64.052, 64.053, and 64.076, Civil
10 Practice and Remedies Code, as amended, shall not
11 apply to insolvent insurance companies being
12 administered under this Article.

13 Revisor's Note

14 (1) Section 4(g), V.T.I.C. Article 21.28,
15 provides in part that Section 64.076, Civil Practice
16 and Remedies Code, does not apply to an insolvent
17 insurer being administered under V.T.I.C. Article
18 21.28. Section 64.076 pertains to actions against
19 receivers of railroad companies. The cross-reference
20 to that section appears to be incorrect. The correct
21 cross-reference appears to be to Section 64.056, Civil
22 Practice and Remedies Code, which pertains to the
23 liability of persons receiving receivership property.
24 Section 64.056 is also cited in Sections 36.210(c) and
25 186.210(c), Finance Code, which are similar to Section
26 4(g), V.T.I.C. Article 21.28. The revised law is
27 drafted accordingly.

28 (2) Section 4(g), V.T.I.C. Article 21.28,
29 refers to certain sections of the Civil Practice and
30 Remedies Code "as amended." The revised law omits "as
31 amended" because under Section 311.027, Government
32 Code (Code Construction Act), applicable to the
33 revised law, unless expressly provided otherwise, a
34 reference to a statute applies to an amendment of the
35 statute.

36 Revised Law

37 Sec. 442.119. EXCLUSIVE JURISDICTION OF OTHER ACTIONS. The
38 court of competent jurisdiction of the county in which the

1 delinquency proceeding is pending has exclusive venue to hear and
2 determine all actions or proceedings instituted by or against the
3 insurer or receiver after the commencement of the delinquency
4 proceeding. (V.T.I.C. Art. 21.28, Sec. 4(h).)

5 Source Law

6 (h) New Lawsuits. The court of competent
7 jurisdiction of the county in which the delinquency
8 proceedings are pending under this Article shall have
9 exclusive venue to hear and determine all actions or
10 proceedings instituted after the commencement of
11 delinquency proceedings by or against the insurer or
12 receiver.

13 Revisor's Note
14 (End of Subchapter)

15 In 1989, Section 4, V.T.I.C. Article 21.28, was
16 amended by Section 6.07, Chapter 1082, Acts of the 71st
17 Legislature, Regular Session, to add Subsection (i)
18 pertaining to criminal history information. That
19 subsection was repealed by Section 46(18), Chapter
20 790, Acts of the 73rd Legislature, Regular Session,
21 1993. Accordingly, the revised law omits the portion
22 of that subsection that is being printed. The omitted
23 provision reads:

24 (i) . . . All criminal history
25 information records obtained by the
26 receiver are privileged information and are
27 for the exclusive use of the receiver.
28 Except on court order or with the consent of
29 the person being investigated, the records
30 may not be released to any other person or
31 agency. The receiver may destroy the
32 criminal history information records after
33 the records are used for the purposes
34 authorized by this subsection. A person
35 commits an offense if the person releases or
36 discloses any information received under
37 this subsection without the authorization
38 provided by this subsection. An offense
39 under this subsection is a Class A
40 misdemeanor.

41 [Sections 442.120-442.150 reserved for expansion]

42 SUBCHAPTER D. GENERAL SUBPOENA POWERS; WITNESSES

43 AND PRODUCTION OF RECORDS

44 Revised Law

45 Sec. 442.151. SUBPOENA AUTHORITY. The receiver may request

1 the court to issue ex parte a subpoena to compel the attendance and
2 testimony of a witness before the receiver and the production of any
3 book, account, paper, correspondence, or other record relating to a
4 matter that pertains to the receivership estate. For that purpose:

5 (1) the court has statewide subpoena power and may
6 compel attendance of witnesses and production of records before the
7 receiver at the receiver's offices in Austin; and

8 (2) the receiver or the receiver's designated
9 representative may administer oaths, examine witnesses, and
10 receive evidence. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

11 Source Law

12 (d) . . . the receiver may request the court ex
13 parte to issue a subpoena to compel the attendance and
14 testimony of witnesses before the receiver and the
15 production of any books, accounts, records, papers,
16 and correspondence or other records relating to any
17 matter that pertains to a receivership estate, and for
18 this purpose the receiver or his designated
19 representative may administer oaths and affirmations,
20 examine witnesses, and receive evidence. In this
21 connection the court has statewide subpoena power and
22 may compel attendance and production of records before
23 the receiver at his offices in Austin, Texas. . . .

24 Revisor's Note

25 (1) Section 4(d), V.T.I.C. Article 21.28,
26 provides that certain authority of the receiver
27 relating to the issuance of subpoenas is in addition to
28 the authority granted by law to the receiver relating
29 to the taking of depositions of witnesses in civil
30 actions. An accepted general principle of statutory
31 construction requires a statute to be given cumulative
32 effect with other statutes unless it provides
33 otherwise or unless the statutes are in conflict. The
34 revised law omits the provision as unnecessary because
35 the general principle applies to the revision. The
36 omitted law reads:

37 (d) Subpoenas. In addition to the
38 authority granted by law to the receiver
39 relating to the taking of depositions of
40 witnesses in civil actions,

41 (2) Section 4(d), V.T.I.C. Article 21.28,

1 refers to "oaths and affirmations." The revised law
2 omits the reference to "affirmations" because Section
3 311.005(1), Government Code (Code Construction Act),
4 applicable to the revised law, states that an oath
5 includes an affirmation.

6 Revised Law

7 Sec. 442.152. SERVICE OF SUBPOENA. A subpoena issued under
8 this subchapter may be served, at the receiver's discretion, by the
9 receiver, the receiver's authorized agent, a sheriff, or a
10 constable. The sheriff's or constable's fee for serving the
11 subpoena is the same as the fee paid the sheriff or constable for
12 similar services. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

13 Source Law

14 (d) . . . The sheriff's or constable's fee for
15 serving the subpoena shall be the same as those paid
16 the sheriff or constable for similar services. Any
17 subpoena issued under this subsection may be served,
18 at the receiver's discretion, by the receiver, his
19 authorized agent, a sheriff, or a constable.
20 . . .

21 Revised Law

22 Sec. 442.153. ENFORCEMENT OF SUBPOENA. (a) On application
23 of the receiver in the case of disobedience of a subpoena or the
24 contumacy of a witness appearing before the receiver or the
25 receiver's designated representative, the court may issue an order
26 requiring the person subpoenaed to obey the subpoena, give
27 evidence, or produce any book, account, paper, correspondence, or
28 other record relating to the matter in question.

29 (b) The court may punish as contempt the failure to obey an
30 order under this section. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

31 Source Law

32 (d) . . . In a case of disobedience of a
33 subpoena, or of the contumacy of a witness appearing
34 before the receiver or his designated representative,
35 the receiver may invoke the aid of the court, and the
36 court may issue an order requiring the person
37 subpoenaed to obey the subpoena or give evidence or
38 produce books, accounts, records, papers, and
39 correspondence or other records respecting the matter
40 in question. Any failure to obey such an order of the
41 court may be punished as contempt by the court.
42 . . .

1 Revisor's Note

2 Section 4(d), V.T.I.C. Article 21.28, states that
3 a receiver may "invoke the aid of" a court. The
4 revised law substitutes "[o]n application of the
5 receiver" for the quoted phrase because, in context,
6 the phrases are synonymous and "on application of the
7 receiver" is more commonly used.

8 Revised Law

9 Sec. 442.154. COMPENSATION FOR ATTENDANCE. (a) A witness
10 who is not a party and who is required to appear before the receiver
11 is entitled to receive:

12 (1) reimbursement for mileage for traveling to or from
13 the place where the witness's presence is required, if the place is
14 more than 25 miles from the witness's place of residence, in the
15 same amount for each mile as the mileage travel allowance for a
16 state employee; and

17 (2) a fee for each day or part of a day the witness is
18 required to be present as a witness that is equal to the greater of:

19 (A) \$10; or

20 (B) the per diem travel allowance of a state
21 employee.

22 (b) Each disbursement made to pay a fee under Subsection (a)
23 shall be included and paid in the manner provided for the payment of
24 other expenses under Sections 442.054, 442.111, and 442.114 and
25 Subchapter J. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

26 Source Law

27 (d) . . . Each witness who is not a party and
28 who is required to attend before the receiver is
29 entitled to receive:

30 (1) reimbursement for travel in the same
31 amount per mile as the mileage travel allowance for
32 state employees for going to and returning from the
33 place where his presence is required, if the place is
34 more than 25 miles from the witness's place of
35 residence; and

36 (2) a fee of not less than Ten Dollars
37 (\$10) a day for each day or part of a day the witness is
38 necessarily present as a witness, but in lieu of such
39 Ten Dollar (\$10) fee, a witness will receive a fee
40 equal to the per diem travel allowance of a state
41 employee if the amount exceeds Ten Dollars (\$10). All

1 disbursements made in the payment of these fees shall
2 be included and paid in the same manner as provided for
3 the payment of other expenses in Section 12 of this
4 Article.

5 . . .

6 Revised Law

7 Sec. 442.155. USE AS EVIDENCE. (a) On certification by the
8 receiver or commissioner under official seal, any book, account,
9 paper, correspondence, document, or other record produced or
10 testimony taken under this chapter and held by the receiver is
11 admissible in evidence in a case without:

12 (1) prior proof of correctness; or

13 (2) other proof except the certificate of the receiver
14 or commissioner that the book, account, paper, correspondence,
15 document, or other record or the testimony was received from the
16 person producing the material or testifying.

17 (b) The certified book, account, paper, correspondence,
18 document, or other record, or a certified copy of the book, account,
19 paper, correspondence, document, or other record, is prima facie
20 evidence of the facts disclosed by that item.

21 (c) This section does not limit any other provision of this
22 chapter or any law that provides for the admission or evidentiary
23 value of evidence. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

24 Source Law

25 (d) . . . On certification by the receiver or
26 the State Board of Insurance under official seal, any
27 books, accounts, records, papers, correspondence, and
28 other records and documents produced or testimony
29 taken pursuant to this Article and held by the receiver
30 are admissible in evidence in all cases without prior
31 proof of their correctness and without other proof
32 except the certificate of the receiver or the State
33 Board of Insurance that the books, accounts, records,
34 papers, correspondence, documents, and testimony were
35 received from the person producing the material or
36 testifying. The certified books, accounts, records,
37 papers, correspondence, and other records and
38 documents or certified copies of them are prima facie
39 evidence of the facts they disclose. This section may
40 not be construed to limit any other provision of this
41 Article or any law that provides for the admission of
42 evidence or for its evidentiary value.

43 Revisor's Note

44 Section 4(d), V.T.I.C. Article 21.28, provides
45 that "[t]his section" may not be construed to limit any

1 other provision of Article 21.28 or any law that
2 provides for the admission of evidence or for its
3 evidentiary value. The pertinent part of Section 4,
4 V.T.I.C. Article 21.28, to which "[t]his section"
5 refers appears to be the paragraph of Section 4(d) that
6 includes that provision, rather than the entire
7 section. That paragraph is revised as this section,
8 and the revised law is drafted accordingly.

9 Revised Law

10 Sec. 442.156. PROTECTIVE ORDERS. A person served with a
11 subpoena under this subchapter may file a motion with the court for
12 a protective order as provided by Rule 192.6, Texas Rules of Civil
13 Procedure. (V.T.I.C. Art. 21.28, Sec. 4(d) (part).)

14 Source Law

15 (d) . . . Any person served with a subpoena
16 under this subsection may file a motion with the court
17 for a protective order as provided by Rule 166b of the
18 Texas Rules of Civil Procedure. . . .

19 Revisor's Note

20 Section 4(d), V.T.I.C. Article 21.28, authorizes
21 a person served with a subpoena under that section to
22 file a motion for a protective order under Rule 166b,
23 Texas Rules of Civil Procedure. That rule was repealed
24 in 1998 and replaced in pertinent part by Rule 192.6,
25 Texas Rules of Civil Procedure. The revised law is
26 drafted accordingly.

27 [Sections 442.157-442.200 reserved for expansion]

28 SUBCHAPTER E. CLAIMS AGAINST RECEIVERSHIP ESTATE

29 Revised Law

30 Sec. 442.201. PROOF OF CLAIM REQUIRED; DEADLINE. (a) If a
31 liquidation, rehabilitation, or conservation order has been
32 entered in a delinquency proceeding, each person who may have a
33 claim against the insurer as provided by Section 442.551, including
34 a claimant with a secured claim or a claim based on trust or escrow
35 funds, must present a proof of claim to the receiver:

(1) at a place specified by the receiver; and
(2) not later than the date specified by the court, which may not be before the 90th day after the date the order specifying the date is entered.

(b) The receiver shall notify all persons who may have a claim against the insurer, as disclosed by the insurer's books and records, regarding the requirement to present a proof of claim to the receiver. The notice must:

(1) specify the last day for presenting a proof of claim; and

(2) be given in a manner determined by the court.

(c) The receiver must receive the required proof of claim before paying a claim.

(d) If a proof of claim is not presented on or before the date specified by the court as required by Subsection (a), the claim may not share in any distribution of the insurer's assets by the receiver, except that, subject to court approval, the receiver may accept a claim presented not later than the 90th day after the date notice is mailed to the person under Subsection (b). (V.T.I.C. Art. 21.28, Secs. 3(a), (b).)

Source Law

Sec. 3. (a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer as set out in Subsection (a) of Section 8 of this Article, including claimants with secured claims and claims based on trust or escrow funds, shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. Receipt of the required proof of claim by the receiver is a condition precedent to the payment of any claim, and except as provided by Subsection (b) of this section, claims that are not filed within the time specified by the court shall not participate in any distribution of the assets by the receiver.

(b) Late Filing. Subject to court approval, the

1 receiver may accept claims filed after the date
2 specified by the court if the claims are filed with the
3 receiver not later than the ninetieth (90th) day after
4 the date notice of the claimant's right to file a proof
5 of claim is mailed to the claimant.

6 Revised Law

7 Sec. 442.202. FORM AND CONTENT OF PROOF OF CLAIM. (a) A
8 proof of claim must be in writing and signed by the claimant and
9 must include:

- 10 (1) a statement of the claim;
- 11 (2) a description of the consideration for the claim;
- 12 (3) a statement of whether securities are held as
13 consideration for the claim and, if so, a description of the
14 securities;
- 15 (4) a statement of any right of priority of payment for
16 the claim or other specific right asserted by the claimant;
- 17 (5) a statement of whether a payment has been made on
18 the claim and, if so, a description of the payment made and the
19 source of the payment;
- 20 (6) a statement that the amount claimed is justly owed
21 by the insurer to the claimant; and
- 22 (7) any other matter that is required by the court in
23 which the receivership is pending.

24 (b) A proof of claim must be in a form prescribed by the
25 receiver, except that the receiver may accept a proof of claim on a
26 form:

- 27 (1) used for proof of claim by the insurer before the
28 receivership; or
- 29 (2) prepared or accepted by a receiver or a guaranty
30 fund in another state, if the receiver in this state is an ancillary
31 receiver.

32 (c) A proof of claim must be made under oath, unless the
33 receiver waives the oath.

34 (d) A written instrument on which a claim is based must be
35 presented with a proof of claim unless lost or destroyed. After the
36 instrument is presented and until final disposition of the claim,

1 the receiver may permit the claimant to substitute a copy of the
2 instrument. If the instrument is lost or destroyed, a statement of
3 that fact and of the circumstances of the loss or destruction must
4 be made under oath and presented with the claim.

5 (e) The receiver may accept from each authorized guaranty
6 association a single proof of claim combining all claims and
7 related administrative expenses assigned to that association. A
8 proof of claim presented by a guaranty association must contain any
9 other information the receiver requires. (V.T.I.C. Art. 21.28,
10 Sec. 3(c).)

11 Source Law

12 (c) Proof Necessary. (1) A proof of claim shall
13 consist of a written statement signed by the claimant
14 that includes the following:

15 (A) the claim;
16 (B) the consideration for the claim;
17 and whether any, and if so, what securities are held
18 for the consideration for that claim;

19 (C) any right of priority of payment
20 for the claim or other specific rights asserted by the
21 claimant;

22 (D) whether any payments have been
23 made on the claim, and if so, what payments have been
24 made on the claim and from what sources;

25 (E) a statement that the sum claimed
26 is justly owed by the insurer to the claimant; and

27 (F) any other matters that are
28 required by the court in which the receivership is
29 pending.

30 (2) A proof of claim shall be in a form
31 designated by the receiver, except that the receiver
32 may accept a proof of claim on a form:

33 (A) used for proof of claim by the
34 insurer before the receivership; or

35 (B) prepared or accepted by a
36 receiver or a guaranty fund in another state, if the
37 receiver in this state is an ancillary receiver.

38 (3) A proof of claim shall be filed under
39 oath, unless the oath is waived by the receiver.

40 (4) If a claim is founded upon an
41 instrument in writing, such instrument, unless lost or
42 destroyed, shall be filed with the proof of claim.
43 After the instrument is filed, the receiver may in his
44 discretion permit the claimant to substitute a true
45 copy of the instrument, until the final disposition of
46 the claim. If the instrument is lost or destroyed, a
47 statement of that fact and of the circumstances of the
48 loss or destruction shall be filed under oath with the
49 claim.

50 (5) The receiver may accept a single proof
51 of claim from each properly authorized insurance
52 guaranty association combining all claims and related
53 administrative expenses assigned to that association.
54 A proof of claim submitted by a guaranty association
55 must set forth any other information the receiver may
56 require.

1 Revisor's Note

2 (1) Section 3(c)(4), V.T.I.C. Article 21.28,
3 refers to a "true" copy of an instrument. The revised
4 law omits the quoted language as unnecessary because
5 "true" is included in the meaning of "copy." For
6 example, the absence of "true" before "copy" does not
7 imply that one can make a fraudulent copy of a document
8 required by a statute.

9 (2) Section 3(c)(5), V.T.I.C. Article 21.28,
10 refers to a "properly authorized insurance guaranty
11 association." The revised law omits "properly" as
12 unnecessary because the term does not add to the clear
13 meaning of the law. A guaranty association is not
14 authorized if it is not properly authorized.
15 Throughout this chapter, the revised law omits
16 "insurance" in this context for consistency in use of
17 terminology in this code.

18 Revised Law

19 Sec. 442.203. UNLIQUIDATED OR UNDETERMINED CLAIM OR DEMAND.

20 (a) A claim based on an unliquidated or undetermined demand must be
21 presented within the time limit provided by this chapter for
22 presenting a claim. The claim may not share in any distribution to
23 claimants until the claim is definitely liquidated, determined, and
24 allowed. After the claim is liquidated, determined, and allowed,
25 the claim shares ratably with the claims of the same class in all
26 subsequent distributions.

27 (b) For the purposes of this chapter, a claim or demand is
28 considered unliquidated or undetermined if:

29 (1) a right of action on the claim or demand accrued as
30 of the date:

31 (A) the delinquency proceeding was commenced; or
32 (B) the insurance policy was canceled, if
33 applicable; and

34 (2) the liability on the claim or demand has not been

1 determined or the amount of the claim or demand has not been
2 liquidated.

3 (c) If the receiver is otherwise able to close the
4 receivership proceeding, the proposed closing is a sufficient
5 ground to reject any remaining unliquidated or undetermined claim
6 or demand. The receiver shall notify the claimant of the receiver's
7 intention to close the proceeding and shall allow liquidation or
8 determination of those claims during the 60 days after the date of
9 the notice. If a remaining claim is not liquidated or determined on
10 or before the 60th day after the date of the notice, the receiver
11 may reject the claim. (V.T.I.C. Art. 21.28, Sec. 3(d).)

12 Source Law

13 (d) Unliquidated or Undetermined Claims or
14 Demands. Claims based on unliquidated or undetermined
15 demands must be filed within the time limit provided in
16 this Article for the filing of claims, but claims based
17 on those demands shall not share in any distribution to
18 claimants until those claims are definitely
19 liquidated, determined, and allowed. Thereafter, the
20 claims shall share ratably with the claims of the same
21 class in all subsequent distributions. An
22 unliquidated or undetermined claim or demand under
23 this Article is any claim or demand on which a right of
24 action has accrued at the date of the commencement of
25 the delinquency proceedings, or the insurance policy
26 cancellation date if applicable, and on which the
27 liability has not been determined or the amount of the
28 claim or demand liquidated. If the receiver in all
29 other respects is in a position to close the
30 receivership proceedings, the proposed closing is
31 sufficient grounds for the rejection of any remaining
32 unliquidated or undetermined claim or demand. The
33 receiver shall notify those claimants of his intention
34 to close the proceedings and shall allow a 60-day
35 period for liquidation and determination of those
36 claims. If the remaining claims are not liquidated or
37 determined within the 60-day period, the receiver may
38 reject the claims and the provisions of Subsection (h)
39 of this section apply.

40 Revisor's Note

41 Section 3(d), V.T.I.C. Article 21.28, authorizes
42 the receiver to reject certain claims and demands and
43 states that the provisions of Section 3(h), Article
44 21.28, apply. That section is revised in this chapter
45 as Sections 442.206-442.208. The revised law omits
46 the reference to the applicability of Section 3(h)
47 because that section applies by its terms to the

1 approval or rejection of claims filed against an
2 insurer, and an express reference to the section's
3 applicability is unnecessary.

4 Revised Law

5 Sec. 442.204. THIRD-PARTY CLAIMS AND DEMANDS. (a) If a
6 court has entered a liquidation, rehabilitation, or conservation
7 order in a delinquency proceeding, a person who has a cause of
8 action against an insured of the insurer under a liability
9 insurance policy issued by the insurer is entitled to file a claim
10 with the receiver, regardless of whether the claim is unliquidated
11 or undetermined.

12 (b) A claim described by Subsection (a) may be approved if:

13 (1) it may be reasonably inferred from the proof
14 presented on the claim that the person would be able to obtain a
15 judgment on the cause of action against the insured;

16 (2) the person provides suitable proof that, other
17 than those already presented, no additional valid claims against
18 the insurer arising out of the person's cause of action may be made;
19 and

20 (3) the total liability of the insurer to all
21 claimants arising out of the same act of the insured is not greater
22 than the total liability of the insurer would be if the insurer were
23 not in liquidation, rehabilitation, or conservation.

24 (c) A judgment entered against an insured or insurer before
25 the date of the commencement of the delinquency proceeding may not
26 be given a priority higher than Class 3 under Section 442.551 unless
27 the judgment creditor proves to the receiver's satisfaction the
28 allegations supporting the judgment.

29 (d) A judgment against an insured taken after the date of
30 the commencement of a delinquency proceeding with respect to the
31 insurer may not be considered in the proceeding as evidence of
32 liability or of the amount of damages. A judgment against an
33 insured taken by default or by collusion before the commencement of
34 the delinquency proceeding may not be considered in the proceeding

1 as conclusive evidence of the liability of the insured on the cause
2 of action or of the amount of damages to which the person is
3 entitled. (V.T.I.C. Art. 21.28, Sec. 3(e).)

4 Source Law

5 (e) Third Party Claims. Where a liquidation,
6 rehabilitation or conservation order has been entered
7 in a proceeding against an insurer under this Article,
8 any person who has a cause of action against an insured
9 of such insurer under a liability insurance policy
10 issued by such insurer, shall have the right to file a
11 claim with the receiver, regardless of the fact that
12 such claim may be unliquidated or undetermined, and
13 such claim may be approved (1) if it may be reasonably
14 inferred from the proof presented upon such claim that
15 such person would be able to obtain a judgment upon
16 such cause of action against such insured; and (2) if
17 such persons shall furnish suitable proof that no
18 further valid claims against such insurer arising out
19 of his cause of action other than those already
20 presented can be made; and (3) if the total liability
21 of such insurer to all claimants arising out of the
22 same act of its insured shall be no greater than its
23 total liability would be were it not in liquidation,
24 rehabilitation or conservation. A judgment entered
25 against an insured or insurer before the date on which
26 the delinquency proceedings commenced may not be
27 accorded higher than a Class 3 priority under
28 Subsection (a) of Section 8 of this Article unless the
29 judgment creditor proves to the receiver's
30 satisfaction the allegations supporting the judgment.
31 No judgment against an insured taken after the date of
32 the commencement of the delinquency proceedings shall
33 be considered in the proceedings as evidence of
34 liability, or of the amount of damages, and no judgment
35 against an insured taken by default or by collusion
36 prior to the commencement of the delinquency
37 proceedings shall be considered as conclusive evidence
38 in the proceeding, either of the liability of such
39 insured to such person upon such cause of action, or of
40 the amount of damages to which such person is therein
41 entitled.

42 Revised Law

43 Sec. 442.205. OFFSETS. (a) Except as provided by
44 Subsection (b), the receiver shall set off mutual debts and mutual
45 credits arising out of one or more contracts between the insurer and
46 another person in connection with a claim or delinquency
47 proceeding, and the receiver may allow or pay only the balance.

48 (b) The receiver may not allow an offset in favor of a person
49 if:

50 (1) the obligation of the insurer to the person would
51 not, on the date of the commencement of the delinquency proceeding
52 or as otherwise provided by Section 442.102, entitle the person to

1 share as a claimant in the assets of the insurer;

2 (2) the obligation of the insurer to the person was
3 purchased by or transferred to the person after the commencement of
4 the delinquency proceeding or for the purpose of increasing offset
5 rights;

6 (3) the obligation of the person is to pay:

7 (A) an assessment levied against the members of a
8 mutual insurer, a reciprocal or interinsurance exchange, or a
9 Lloyd's plan; or

10 (B) a balance on a subscription to the capital
11 stock of a stock insurance corporation;

12 (4) the obligation of the person is as a trustee or
13 fiduciary; or

14 (5) the obligation between the person and the insurer
15 arises from a reinsurance transaction in which the person or the
16 insurer assumed risks and obligations from the other party and then
17 ceded to that party substantially the same risks and obligations.

18 (c) The receiver shall provide a person with an accounting
19 statement identifying each debt that is due and payable. A person
20 shall promptly pay to the receiver any amount due and payable to the
21 insurer against which the person asserts an offset of mutual
22 credits that may become due and payable from the insurer in the
23 future. Notwithstanding Subchapter L or any other provision of
24 this chapter, the receiver shall promptly and fully refund, to the
25 extent of the person's prior payment, any mutual credits that
26 become due and payable to the person by the insurer. (V.T.I.C. Art.
27 21.28, Secs. 3(f), (g).)

28 Source Law

29 (f) Offsets. In all cases of mutual debts or
30 mutual credits, whether arising out of one or more
31 contracts between the insurer and another person in
32 connection with any claim or proceeding under this
33 Article, such credits and debts shall be set off and
34 the balance only shall be allowed or paid, except as
35 provided in subsection (g).

36 (g) No Offsets. No offsets shall be allowed in
37 favor of any person where (1) the obligation of the
38 insurer to such person would not at the date of the
39 commencement of the delinquency proceedings or as

1 otherwise provided in Section 2(c), entitle him to
2 share as a claimant in the assets of such insurer, or
3 (2) the obligation of the insurer to such person was
4 purchased by or transferred to such person subsequent
5 to the commencement of the delinquency proceedings or
6 for the purpose of increasing offset rights, or (3) the
7 obligation of such person is to pay an assessment
8 levied against the members of a mutual insurer, or
9 reciprocal exchange, or underwriters at Lloyds, or to
10 pay a balance upon a subscription to the capital stock
11 of a stock insurance corporation, or (4) the
12 obligation of such person is as a trustee or fiduciary,
13 or (5) the obligations between the person and the
14 insurer arise from reinsurance transactions in which
15 either the person or the insurer has assumed risks and
16 obligations from the other party and then has ceded
17 back to that party substantially the same risks and
18 obligations. The receiver shall provide persons with
19 accounting statements identifying all debts that are
20 due and payable. If a person owes the insurer amounts
21 that are due and payable, against which the person
22 asserts offset of mutual credits that may become due
23 and payable from the insurer in the future, the person
24 shall promptly pay to the receiver the amounts due and
25 payable. Notwithstanding Section 8, or any other
26 provision of this Article, the receiver shall promptly
27 and fully refund, to the extent of the person's prior
28 payments, any mutual credits that become due and
29 payable to the person by the insurer.

30 Revisor's Note

31 Section 3(g), V.T.I.C. Article 21.28, refers to a
32 "reciprocal exchange" and "underwriters at Lloyds."
33 The revised law substitutes "reciprocal or
34 interinsurance exchange" and "Lloyd's plan" for
35 "reciprocal exchange" and "underwriters at Lloyds,"
36 respectively, for the reason stated in Revisor's Note
37 (2) to Section 442.108.

38 Revised Law

39 Sec. 442.206. APPROVAL OR REJECTION OF CLAIM. (a) The
40 receiver may approve or reject a claim filed against the insurer.

41 (b) On a rejection of a claim in whole or in part, the
42 receiver shall notify the claimant in writing of the rejection.
43 (V.T.I.C. Art. 21.28, Sec. 3(h) (part).)

44 Source Law

45 (h) Action on Claims. The receiver shall have
46 the discretion to approve or reject any claim filed
47 against the insurer. . . . Upon the rejection of each
48 claim either in whole or in part, the receiver shall
49 notify the claimant of such rejection by written
50 notice. . . .

Revised Law

Sec. 442.207. APPEAL OF RECEIVER'S REJECTION OF CLAIM. (a)
The receiver's rejection of a claim may be appealed in the court.
The appeal must be brought within three months after the date of
service of notice of the rejection.

(b) If the receiver's action is appealed within the time prescribed by Subsection (a), review is de novo as if originally filed in the court and is subject to the rules of procedure and appeal applicable to civil cases. The appeal is separate from the delinquency proceeding, and an attempt to appeal the receiver's action by intervening in the delinquency proceeding does not comply with this subsection.

(c) If the receiver's action is not appealed within the time prescribed by Subsection (a), the action is final and not subject to judicial review. (V.T.I.C. Art. 21.28, Sec. 3(h) (part).)

Source Law

(h) . . . Action upon a claim so rejected must be brought in the court in which the delinquency proceeding is pending within three (3) months after service of notice; otherwise, the action of the receiver shall be final and not subject to review. Such action shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases. This action shall be a separate action from the delinquency proceeding, and a claimant's attempt to appeal the action of the receiver by way of intervening in the delinquency proceeding does not comply with this subsection.

Revisor's Note

Section 3(h), V.T.I.C. Article 21.28, refers to the court "in which the delinquency proceeding is pending." The revised law omits the quoted language as unnecessary because under Section 1(f), V.T.I.C. Article 21.28, revised in this chapter as Section 442.001(b), for purposes of this chapter, "court" means the court in which a delinquency proceeding is pending, unless the context clearly indicates otherwise.

1 Revised Law

2 Sec. 442.208. OBJECTION TO CLAIM BY INTERESTED PARTY. (a)
3 An interested party may object to a claim not rejected by the
4 receiver by filing an objection with the receiver.

5 (b) The receiver shall promptly present the objection to the
6 court for a determination after notice and hearing. (V.T.I.C. Art.
7 21.28, Sec. 3(h) (part).)

8 Source Law

9 (h) . . . Objections to any claim not rejected
10 may be made by any party interested, by filing the
11 objections with the receiver, who shall forthwith
12 present them to the court for determination after
13 notice and hearing. . . .

14 Revised Law

15 Sec. 442.209. REFERRAL OF CLAIM TO GUARANTY ASSOCIATION.
16 Notwithstanding any other provision of this chapter, the receiver
17 shall refer a claim covered by a guaranty fund created under Chapter
18 462, 463, or 2602 to the appropriate guaranty association for
19 processing. (V.T.I.C. Art. 21.28, Sec. 3(i).)

20 Source Law

21 (i) Notwithstanding any other provision of this
22 article, if a claim is covered by a guaranty fund
23 created under Article 9.48, 21.28-C, or 21.28-D of
24 this code, the receiver shall refer the claim to the
25 appropriate guaranty association for processing.

26 Revised Law

27 Sec. 442.210. WORKERS' COMPENSATION CLAIMS. (a) The
28 receiver shall notify the Texas Workers' Compensation Commission
29 immediately on a finding of insolvency or impairment with regard to
30 an insurance company that has in force any workers' compensation
31 coverage in this state.

32 (b) On receipt of the notice under Subsection (a), the Texas
33 Workers' Compensation Commission shall submit to the receiver a
34 list of active cases pending before the commission in which:

- 35 (1) the insurance company has accepted liability;
36 (2) it appears that a bona fide dispute does not exist;
37 (3) payments were begun before the finding of
38 insolvency or impairment; and

(4) payment of future or past workers' compensation benefits is due.

(c) Notwithstanding the other provisions of this subchapter, the receiver may begin or continue the payment of claims on cases included in the list submitted under Subsection (b).

(d) Files and other information delivered by the Texas Workers' Compensation Commission to the receiver may be delivered to the Texas Property and Casualty Insurance Guaranty Association.

(e) The Texas Workers' Compensation Commission shall report to the department any act of a workers' compensation insurance company that may indicate that the company is financially impaired, delinquent, or insolvent. (V.T.I.C. Art. 21.28, Secs. 3A(a), (b), (c), (d) (part), (e).)

Source Law

Sec. 3A. (a) The liquidator shall notify the Texas Workers' Compensation Commission immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation Commission shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation Commission in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) Files and information delivered by the Texas Workers' Compensation Commission to the liquidator may be delivered to the Texas Workers' Compensation Pool or

(e) The Texas Workers' Compensation Commission shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

Revisor's Note

(1) Section 3A(b), V.T.I.C. Article 21.28, refers to a "carrier" and to "future or past indemnity or medical payments." Section 3A(e), Article 21.28, refers to an "insurer." The revised law substitutes

1 "insurance company" for "carrier" and "insurer" and
2 substitutes "payment of future or past workers'
3 compensation benefits" for "future or past indemnity
4 or medical payments" for consistency with the
5 terminology used in the Labor Code with respect to
6 workers' compensation insurance and benefits.

7 (2) Section 3A(d), V.T.I.C. Article 21.28,
8 requires the receiver to "contract with the Texas
9 Workers' Compensation Pool or any other qualified
10 organization for claims adjusting" services and
11 authorizes the receiver to deliver files and other
12 information received from the Texas Workers'
13 Compensation Commission to that pool or organization.
14 The reference to the "Texas Workers' Compensation
15 Pool" is a reference to the Texas workers' compensation
16 assigned risk pool, which was created under former
17 V.T.I.C. Article 5.76. That article was repealed by
18 Chapter 1, Acts of the 71st Legislature, 2nd Called
19 Session, 1989, which amended this code by adding
20 V.T.I.C. Article 5.76-2 and took effect January 1,
21 1991. Article 5.76-2 revised, amended, and continued
22 the Texas workers' compensation assigned risk pool as
23 the Texas workers' compensation insurance facility.
24 Article 5.76-2 was repealed by Chapter 594, Acts of the
25 75th Legislature, Regular Session, 1997. Section 1.03
26 of that act directed that the facility be converted to
27 a Texas stock property and casualty insurance company
28 or, in specified circumstances, the operation of the
29 facility be transferred to the Texas Property and
30 Casualty Insurance Guaranty Association. However,
31 following enactment of Chapter 594 in 1997, the
32 facility was transferred to a private stock insurance
33 company.

34 The revised law omits the requirement that the

1 receiver contract with the "Texas Workers'
2 Compensation Pool" or any other qualified organization
3 for claims adjusting services because that provision
4 has been impliedly repealed. Section 3A, V.T.I.C.
5 Article 21.28, was added by Chapter 904, Acts of the
6 69th Legislature, Regular Session, 1985. At that
7 time, the receiver was the entity charged with
8 processing and paying workers' compensation claims.
9 V.T.I.C. Article 21.28-C, which regulates the Texas
10 Property and Casualty Insurance Guaranty Association
11 and is revised in this code as Chapter 462, required
12 the receiver to process covered claims under that
13 article, which included claims under workers'
14 compensation insurance policies, in the same manner as
15 other claims as provided by V.T.I.C. Article 21.28. To
16 permit the receiver to pay all covered claims, the
17 Texas Property and Casualty Insurance Guaranty
18 Association was required to pay the receiver the
19 amount determined by the receiver to be necessary to
20 supplement the assets of the impaired insurer.

21 In 1991, Section 3, V.T.I.C. Article 21.28, was
22 amended by Chapter 12, Acts of the 72nd Legislature,
23 2nd Called Session, to add Subsection (i). That
24 subsection, revised in this chapter as Section
25 442.209, provides that, notwithstanding any other
26 provision of the article, if a claim is covered by a
27 guaranty fund created under V.T.I.C. Article 9.48,
28 21.28-C, or 21.28-D, the receiver is required to refer
29 the claim to the appropriate guaranty association for
30 processing. Chapter 12 also amended V.T.I.C. Article
31 21.28-C in its entirety. Section 8(d), V.T.I.C.
32 Article 21.28-C, revised in relevant part in this code
33 as Section 462.301, now requires the Texas Property
34 and Casualty Insurance Guaranty Association to

1 investigate and adjust, compromise, settle, and pay
2 covered claims to the extent of the association's
3 obligation. That article does not require the
4 association to enter into a contract with the
5 receiver, nor does it authorize the receiver to
6 contract with another organization to process workers'
7 compensation insurance claims. Furthermore, in 1993,
8 V.T.I.C. Article 21.28-C was amended by Chapter 685,
9 Acts of the 73rd Legislature, Regular Session, to add
10 Section 25(a), revised in this code as Section
11 462.010(a), which provides that if a conflict exists
12 between that article and any other statutory provision
13 relating to the association, that article controls.

14 Since workers' compensation insurance claims are
15 now required to be referred to the Texas Property and
16 Casualty Insurance Guaranty Association for
17 processing and since the association is required to
18 adjust those claims, the revised law omits as
19 impliedly repealed the requirement that the receiver
20 contract with the "Texas Workers' Compensation Pool"
21 or any other qualified organization for claims
22 adjusting.

23 Section 3A(d), V.T.I.C. Article 21.28, also
24 authorizes the receiver to deliver files and other
25 information received from the Texas Workers'
26 Compensation Commission to the "Texas Workers'
27 Compensation Pool" or any organization with which the
28 receiver has contracted for claims adjusting services.
29 For the reasons provided above, the revised law
30 substitutes a reference to the association for the
31 reference to the pool and omits the reference
32 regarding the delivery of files and other information
33 to an organization providing claims adjusting
34 services. The omitted law reads:

1 (d) In order to avoid undue delay in
2 the payment of covered workers'
3 compensation claims, the liquidator shall
4 contract with the Texas Workers'
5 Compensation Pool or any other qualified
6 organization for claims adjusting. [Files
7 and information delivered by the Texas
8 Workers' Compensation Commission to the
9 liquidator may be delivered to the Texas
10 Workers' Compensation Pool or] any
11 organization with which the liquidator has
12 contracted for claims adjusting services.

13 [Sections 442.211-442.250 reserved for expansion]

14 SUBCHAPTER F. VOIDABLE TRANSFERS OR LIENS

15 Revised Law

16 Sec. 442.251. CERTAIN TRANSFERS OR LIENS VOIDABLE. A
17 transfer of or lien on the assets of an insurer is voidable if the
18 transfer or lien was:

19 (1) made or created:

20 (A) within four months before the date of the
21 commencement of the delinquency proceeding; and

22 (B) with the intent of giving to a creditor or
23 enabling the creditor to obtain a greater percentage of the
24 creditor's debt than is to be given to or obtained by another
25 creditor of the same class; and

26 (2) accepted by the creditor having reasonable cause
27 to believe that a preference described by Subdivision (1)(B) would
28 occur. (V.T.I.C. Art. 21.28, Sec. 5(a).)

29 Source Law

30 Sec. 5. (a) Transfers or Liens Voidable. Any
31 transfer or lien upon the property or assets of an
32 insurer which is made or created within four (4) months
33 prior to the commencement of delinquency proceedings
34 under this Article, with the intent of giving to any
35 creditor or enabling him to obtain a greater
36 percentage of his debt than of any other creditor of
37 the same class, and which is accepted by such creditor,
38 having reasonable cause to believe that such
39 preference will occur, shall be voidable.

40 Revised Law

41 Sec. 442.252. PERSONAL LIABILITY FOR VOIDABLE TRANSFER OR
42 LIEN. (a) The following persons are personally liable for the
43 property of the insurer or the benefit of that property received as
44 a result of a transfer or lien described by Section 442.251:

1 (1) each director, officer, agent, employee,
2 shareholder, member, attorney-in-fact, including an associate,
3 substitute, or deputy attorney-in-fact, underwriter, subscriber,
4 or other person acting on behalf of the insurer who is concerned in
5 the transfer or lien; and

6 (2) each person who, as a result of the transfer or
7 lien, receives the property of the insurer or the benefit of that
8 property.

9 (b) A person who is personally liable under Subsection (a)
10 shall account to the receiver for the benefit of the creditors of
11 the insurer. (V.T.I.C. Art. 21.28, Sec. 5(b).)

12 Source Law

13 (b) Personal Liability. Every director,
14 officer, agent, employee, stockholder, member,
15 attorney-in-fact, associate, substitute or deputy
16 attorney-in-fact, underwriter, subscriber, and any
17 other person acting on behalf of such insurer, who
18 shall be concerned in any such prohibited act or deed,
19 and every person receiving thereby property of such
20 insurer, or the benefit thereof, shall be personally
21 liable therefor, and shall be bound to account to the
22 receiver for the benefit of the creditors of the
23 insurer.

24 Revisor's Note

25 Section 5(b), V.T.I.C. Article 21.28, refers to
26 "such prohibited act or deed," meaning an act or deed
27 prohibited by Section 5(a) of that article, revised in
28 this chapter as Section 442.251. Section 5(a) does not
29 contain a prohibition per se. That provision states
30 that certain transfers and liens are voidable.
31 Accordingly, the revised law refers to a transfer or
32 lien "described" by Section 442.251.

33 Revised Law

34 Sec. 442.253. AVOIDANCE OF TRANSFER OR LIEN; RECOVERY OF
35 PROPERTY. The receiver may:

36 (1) avoid a transfer of or lien on the assets of an
37 insurer that a creditor, shareholder, or member of the insurer
38 might have avoided; and

39 (2) recover the transferred property or the value of

1 that property from the person to whom the property was transferred
2 or from a person who received the property, unless the transferee or
3 recipient was a bona fide holder for value before the date of the
4 commencement of the proceeding. (V.T.I.C. Art. 21.28, Sec. 5(c).)

5 Source Law

6 (c) Avoiding and Recovery. The receiver in any
7 proceeding under this Article, may avoid any transfer
8 of, or lien upon the property or assets of an insurer
9 which any creditor, stockholder or member of such
10 insurer might have avoided, and may recover the
11 property so transferred or its value from the person to
12 whom it was transferred, unless he was a bona fide
13 holder for value prior to the date of the commencement
14 of proceedings under this Article. Such property or
15 its value may be recovered from anyone who has received
16 it, except a bona fide holder for value as above
17 specified.

18 [Sections 442.254-442.300 reserved for expansion]

19 SUBCHAPTER G. ASSESSMENTS

20 Revised Law

21 Sec. 442.301. APPLICATION FOR ASSESSMENT. (a) Not later
22 than the fourth anniversary of the date of an order of
23 rehabilitation or liquidation of a domestic insurer, the receiver
24 may apply to the court to levy an assessment against the members of
25 a mutual insurance company, the members of a reciprocal or
26 interinsurance exchange, or the insureds of a Lloyd's plan who have
27 been issued an insurance policy that expressly provides that the
28 policy is subject to assessment.

29 (b) The application must state:

- 30 (1) the reasonable value of the insurer's assets;
31 (2) the insurer's probable liabilities; and
32 (3) the probable assessment, if any, necessary to pay
33 all possible claims and expenses in full, including expenses of
34 administration and collection. (V.T.I.C. Art. 21.28, Sec. 7(a).)

35 Source Law

36 Sec. 7. (a) Application. Within four (4) years
37 from the date of an order of rehabilitation, or
38 liquidation, of a domestic insurer, the receiver may
39 make an application to the court to levy an assessment
40 against the members of a mutual insurer, members of a
41 reciprocal exchange, or the insureds of a Lloyds who
42 have been issued an insurance policy that provides
43 that the policy is subject to assessment. Such

1 application shall set forth the reasonable value of
2 the assets of such insurer, its probable liabilities,
3 and the probable necessary assessment, if any, to pay
4 all possible claims and expenses in full, including
5 expenses of administration and collection.

6 Revisor's Note

7 (1) Section 7(a), V.T.I.C. Article 21.28,
8 refers to a "mutual insurer," "reciprocal exchange,"
9 and "Lloyds." The revised law substitutes "mutual
10 insurance company," "reciprocal or interinsurance
11 exchange," and "Lloyd's plan" for "mutual insurer,"
12 "reciprocal exchange," and "Lloyds" for the reason
13 stated in Revisor's Note (2) to Section 442.108.

14 (2) Section 7(a), V.T.I.C. Article 21.28,
15 authorizes the receiver to apply to the court to levy
16 an assessment against certain members or insureds who
17 have been issued an insurance policy that provides
18 that the policy is subject to assessment. The revised
19 law refers to an insurance policy that "expressly"
20 provides that the policy is subject to assessment to
21 conform to Section 7(b), Article 21.28, revised in
22 this chapter as Section 442.302, which provides that
23 the court may not levy an assessment against a member
24 or insured with regard to an insurance policy that does
25 not expressly provide that the policy is subject to
26 assessment.

27 Revised Law

28 Sec. 442.302. LEVY. (a) After giving notice in the manner
29 designated by the court to each member or insured described by
30 Section 442.301, the court shall consider the application made
31 under that section and may levy one or more assessments, subject to
32 Subsection (c).

33 (b) The assessment or assessments must cover the excess of
34 the insurer's probable liabilities over the reasonable value of the
35 insurer's assets, together with the estimated cost of collection
36 and percentage of uncollectibility of the assessments.

1 (c) The court may not levy an assessment against a member or
2 insured with regard to an insurance policy that does not expressly
3 provide that the policy is subject to assessment. (V.T.I.C. Art.
4 21.28, Sec. 7(b).)

5 Source Law

6 (b) Levy. After notice to each member or
7 insured in the manner designated by the court, the
8 court shall proceed to consider such report and may
9 levy one or more assessments. Such assessment or
10 assessments shall cover the excess of the probable
11 liabilities over the reasonable value of the assets,
12 together with the estimated cost of collection and
13 percentage of uncollectibility thereof. An assessment
14 shall not be levied against any such member or insured
15 with respect to a policy that does not contain an
16 express provision that the policy is an assessable
17 policy.

18 Revisor's Note

19 Section 7(b), V.T.I.C. Article 21.28, requires
20 the court to consider "such report," meaning a report
21 on a requested assessment. The revised law
22 substitutes "the application made under [Section
23 442.301]" for "such report" because Section 7(a),
24 V.T.I.C. Article 21.28, revised in this chapter as
25 Section 442.301, authorizes the receiver to submit an
26 application for an assessment to the court.

27 Revised Law

28 Sec. 442.303. COLLECTION. After the court enters an order
29 of assessment under Section 442.302 and after the time for appeal
30 expires, the receiver shall collect the assessments. The receiver
31 may bring an action in a court of competent jurisdiction in the
32 county in which the delinquency proceeding is pending to collect an
33 assessment. (V.T.I.C. Art. 21.28, Sec. 7(c).)

34 Source Law

35 (c) Collection. After the entry of such an
36 order of assessment and the expiration of the time for
37 appeal, the receiver shall proceed to collect such
38 assessments, and for the purpose of such collection
39 may bring suit for the same in any court of competent
40 jurisdiction in the county in which such delinquency
41 proceeding is pending.

Revised Law

Sec. 442.304. SUBCHAPTER NOT EXCLUSIVE. The provisions of this subchapter are in addition to any other remedies for the levy and collection of assessments. (V.T.I.C. Art. 21.28, Sec. 7(d).)

Source Law

(d) Provisions Cumulative. The provisions of this Section are cumulative of any other remedies for the levy and collection of assessments.

[Sections 442.305-442.350 reserved for expansion]

SUBCHAPTER H. REINSURANCE

Revised Law

Sec. 442.351. REINSURER'S LIABILITY. (a) If the receiver has a claim under an insurance policy covered by reinsurance, the liability of the reinsurer to the receiver under the reinsured contract may not be reduced because of the delinquency proceeding against the delinquent insurer, regardless of any contrary provision in the reinsurance contract, unless:

(1) the reinsurance contract or other written agreement was entered into before the delinquency proceeding, is otherwise permitted by law, and specifically provides another payee of the reinsurance if the ceding insurer becomes insolvent; or

(2) the assuming insurer, with the consent of the direct insured, has assumed in accordance with an assumption reinsurance agreement the policy obligations of the ceding insurer:

(A) as direct obligations of the assuming insurer to the payees under the policy; and

(B) in substitution for the obligations of the ceding insurer to the payees.

(b) Except as provided by Subsection (a), any reinsurance is payable to the receiver under a reinsured contract by the assuming insurer on the basis of:

(1) an approved claim under Section 442.206; and

(2) a claim paid by a guaranty association under Chapter 462, 463, or 2602 or by the guaranty association of another

1 state. (V.T.I.C. Art. 21.28, Sec. 10(a).)

2 Source Law

3 Sec. 10. (a) Reinsurer's Liability. If the
4 receiver has claims under policies covered by
5 reinsurance, there shall be no diminution of the
6 liability of the reinsurer to the receiver under the
7 contracts reinsured because of the delinquency
8 proceeding against the delinquent company, regardless
9 of any provisions in the reinsurance contract to the
10 contrary, except: (i) where the contract or other
11 written agreement entered into prior to the
12 delinquency proceeding and otherwise permitted by law
13 specifically provides another payee of such
14 reinsurance in the event of the insolvency of the
15 ceding insurer; or (ii) where the assuming insurer,
16 with the consent of the direct insured, has assumed
17 such policy obligations of the ceding insurer pursuant
18 to an assumption reinsurance agreement as direct
19 obligations of the assuming insurer to the payees
20 under policies and in substitution for the obligations
21 of the ceding insurer to such payees. With the sole
22 exception of (i) and (ii) above, any reinsurance shall
23 be payable to the receiver under a contract reinsured
24 by the assuming insurer on the basis of approved claims
25 under Section 3(h) of this Article and claims paid
26 under Articles 9.48, 21.28-C, and 21.28-D of this code
27 or the guaranty associations of other states.

28 Revisor's Note

29 Section 10(a), V.T.I.C. Article 21.28, provides
30 that, with the "sole" exception of certain referenced
31 provisions, any reinsurance is payable to the receiver
32 under a contract reinsured by the assuming insurer on
33 the basis of certain claims. The revised law omits
34 "sole" as unnecessary because the word does not add to
35 the clear meaning of the law. A reference to
36 provisions that state an exception to a general rule is
37 sufficient to limit the exception to only those
38 provisions.

39 Revised Law

40 Sec. 442.352. NOTICE OF CLAIM TO REINSURER; INTERPOSITION
41 OF DEFENSE. (a) Within a reasonable time after a claim against
42 the receiver under an insurance policy covered by reinsurance is
43 filed in the delinquency proceeding, the receiver shall give
44 written notice of the pendency of the claim to each affected
45 reinsurer.

46 (b) While the claim is pending, an affected reinsurer may,

1 at the reinsurer's expense, investigate the claim and interpose in
2 the proceeding in which the claim is to be adjusted any defense the
3 reinsurer considers available to the delinquent insurer or the
4 receiver.

5 (c) Subject to court approval, the expense incurred by an
6 assuming insurer under Subsection (b) is chargeable against the
7 delinquent insurer as part of the expense of liquidation to the
8 extent of a proportionate share of any benefit that may accrue to
9 the delinquent insurer solely as a result of the defense undertaken
10 by the assuming insurer. If two or more assuming insurers are
11 involved in the same claim and a majority in interest elect to
12 interpose a defense to the claim, the expense shall be apportioned
13 in accordance with the terms of the reinsurance agreement as if the
14 expense had been incurred by the ceding insurer. (V.T.I.C. Art.
15 21.28, Sec. 10(b).)

16 Source Law

17 (b) Notice to Reinsurer. The liquidator or
18 receiver shall give written notice to the affected
19 reinsurers of the pendency of a claim against the
20 receiver under a policy covered by reinsurance within
21 a reasonable time after such claim is filed in the
22 delinquency proceeding. During the pendency of such
23 claim any affected reinsurer may investigate such
24 claim and interpose, at its own expense, in the
25 proceeding where the claim is to be adjusted any
26 defense or defenses which it may deem available to the
27 delinquent company, the liquidator or the receiver.
28 Subject to court approval, the expense thus incurred
29 shall be chargeable against the delinquent company as
30 part of the expense of liquidation to the extent of a
31 proportionate share of the benefit which may accrue to
32 the delinquent company solely as a result of the
33 defense undertaken by the assuming insurer. Where two
34 or more assuming insurers are involved in the same
35 claim and a majority in interest elect to interpose a
36 defense to such claim, the expense shall be
37 apportioned in accordance with the terms of the
38 reinsurance agreement as though such expense had been
39 incurred by the ceding insurer.

40 Revisor's Note
41 (End of Subchapter)

42 Section 10(c), V.T.I.C. Article 21.28, provides
43 that V.T.I.C. Article 6.16 remains in full force and
44 effect and governs as to insurance companies affected
45 by that article. As enacted by Chapter 491, Acts of

1 the 52nd Legislature, Regular Session, 1951, Article
2 6.16 contained provisions governing diminution of the
3 liability of an assuming insurer because of the
4 insolvency of the ceding insurer, notice by the
5 receiver of the insolvent ceding insurer regarding the
6 pendency of a claim against the insolvent ceding
7 insurer, investigation and defense of the claim by the
8 assuming insurer, and recovery of the expenses
9 incurred by the assuming insurer. Chapter 267, Acts
10 of the 54th Legislature, Regular Session, 1955,
11 amended Article 21.28 by adding Section 10. As added,
12 that section contained provisions that were similar
13 to, but not the same as, the provisions of Article 6.16
14 described above. Chapter 88, Acts of the 68th
15 Legislature, Regular Session, 1983, amended Article
16 6.16 by striking the provisions of the article
17 described above. Article 6.16 was revised in this code
18 in 2001 as Section 862.101, which took effect June 1,
19 2003. However, since that section no longer contains
20 any provisions that conflict with Section 10, the
21 statement of the continued applicability of that
22 section is omitted. The omitted law reads:

23 (c) Provided, however, that Article
24 6.16 of the Insurance Code of 1951, Acts
25 Regular Session of the Fifty-second
26 Legislature, 1951, Chapter 491, page 868,
27 shall remain in full force and effect and
28 shall govern as to those insurance
29 companies affected thereby.

30 [Sections 442.353-442.400 reserved for expansion]

31 SUBCHAPTER I. RECORDS AND OTHER INFORMATION

32 Revised Law

33 Sec. 442.401. USE OF RECORDS AND OTHER INFORMATION AS
34 EVIDENCE. (a) A book, paper, document, or record of a delinquent
35 insurer received by the receiver and held in the course of the
36 delinquency proceeding or a certified copy of the book, paper,
37 document, or record signed and under the official seal of the

1 commissioner or receiver is admissible in evidence in a case
2 without proof of correctness or other proof except the certificate
3 of the commissioner or receiver that the book, paper, document, or
4 record was received from the custody of the delinquent insurer or
5 found among the insurer's effects.

6 (b) The certified original or a certified copy of a book,
7 paper, document, or record described by this section or Section
8 442.402 is prima facie evidence of the facts disclosed by the book,
9 paper, document, or record. (V.T.I.C. Art. 21.28, Secs. 11(a),
10 (c).)

11 Source Law

12 Sec. 11. (a) Records Admitted. All books,
13 records, documents and papers of any delinquent
14 insurer received by the receiver and held in the course
15 of the delinquency proceedings, or certified copies
16 thereof, under the hand and official seal of the Board
17 and/or receiver, shall be received in evidence in all
18 cases without proof of the correctness of the same and
19 without other proof, except the certificate of the
20 Board and/or receiver that the same was received from
21 the custody of the delinquent insurer or found among
22 its effects.

23 (c) Prima-facie Evidence. Such original books,
24 records, documents and papers, or certified copies
25 thereof, or any part thereof, when received in
26 evidence shall be prima-facie evidence of the facts
27 disclosed thereby.

28 Revised Law

29 Sec. 442.402. CERTIFICATES BY RECEIVER. (a) The receiver
30 may:

31 (1) certify to the correctness of a book, paper,
32 document, or record of the receiver's office, including a book,
33 paper, document, or record described by Section 442.401; and

34 (2) certify under seal of the commissioner to a fact
35 contained in a book, paper, document, or record of the department.

36 (b) A book, paper, document, or record certified as
37 described by Subsection (a) is admissible in evidence in any case in
38 which the original would be evidence. (V.T.I.C. Art. 21.28, Sec.
39 11(b).)

40 Source Law

41 (b) Certificates. The receiver shall have the

1 authority to certify to the correctness of any paper,
2 document or record of the receiver's office, including
3 those described in (a) of this section, and to make
4 certificates under seal of the Board and certified by
5 the receiver certifying to any fact contained in the
6 papers, documents or records of the Texas Department
7 of Insurance; and the same shall be received in
8 evidence in all cases in which the originals would be
9 evidence.

10 Revisor's Note

11 (1) Section 11(b), V.T.I.C. Article 21.28,
12 refers to a "paper, document or record" and to "papers,
13 documents or records." The revised law adds
14 references to a "book" for consistency with Sections
15 11(a) and (c), Article 21.28, revised in this chapter
16 as Section 442.401, which refer to "books, records,
17 documents and papers."

18 (2) Section 11(b), V.T.I.C. Article 21.28,
19 refers to the "Texas Department of Insurance."
20 Section 31.001 of this code defines "department" for
21 purposes of this code and the other insurance laws of
22 this state to mean the Texas Department of Insurance.
23 The revised law is drafted accordingly.

24 Revised Law

25 Sec. 442.403. MAINTENANCE OF RECORDS. (a) The receiver
26 may devise a method for the effective, efficient, and economical
27 maintenance of the records of the delinquent insurer and of the
28 receiver's office. The method may include maintaining those
29 records on any medium approved by the records management division
30 of the Texas State Library.

31 (b) A copy of an original record or another record that is
32 maintained within the scope of this subchapter on a medium approved
33 by the records management division of the Texas State Library and
34 that is produced by the receiver or the receiver's authorized
35 representative under this chapter:

- 36 (1) has the same effect as the original record; and
37 (2) may be used in the same manner as the original
38 record in a judicial or administrative proceeding in this state.

1 (c) The receiver may reserve the estate assets for deposit
2 in an account to be used for the specific purpose of maintenance,
3 storage, and disposal of records in closed receivership estates.
4 (V.T.I.C. Art. 21.28, Sec. 11(d).)

5 Source Law

6 (d) Maintenance of Records. The receiver may
7 devise a method for the effective, efficient, and
8 economical maintenance of the records of the
9 delinquent insurer and of the liquidator's office
10 including maintaining those records on any medium
11 approved by the Records Management Division of the
12 Texas State Library. A copy of an original record or
13 any other record that is maintained on any medium
14 approved by the Records Management Division of the
15 Texas State Library within the scope of this section
16 that is produced by the receiver or his authorized
17 representative under this Article shall have the same
18 force and effect as the original record and may be used
19 the same as the original record in any judicial or
20 administrative proceeding in this state. In order to
21 maintain the records of delinquent insurers after the
22 closing of the receivership proceedings, the receiver
23 may reserve assets of an estate to be deposited in an
24 account to be used for the specific purpose of
25 maintenance, storage, and disposal of records in
26 closed receivership estates.

27 Revisor's Note

28 Section 11(d), V.T.I.C. Article 21.28, provides
29 that a copy of a record maintained in a certain manner
30 has the same "force and effect" as the original record.
31 The reference to "force" is omitted from the revised
32 law because "force" is included within the meaning of
33 "effect."

34 Revised Law

35 Sec. 442.404. DISPOSAL OF RECORDS. On approval by the
36 court, the receiver may dispose of any records of the delinquent
37 insurer that are obsolete and unnecessary to the continued
38 administration of the receivership proceeding. (V.T.I.C. Art.
39 21.28, Sec. 11(e).)

40 Source Law

41 (e) Disposition of Records. On approval by the
42 court, the receiver may dispose of any records of the
43 delinquent insurer that are obsolete and unnecessary
44 to the continued administration of the receivership
45 proceedings.

1 Revised Law

2 Sec. 442.405. INAPPLICABILITY OF PUBLIC INFORMATION LAW.
3 Chapter 552, Government Code, does not apply to any record of a
4 receivership estate, or to any record of an insurer before the
5 insurer's receivership, held by the receiver under this chapter.
6 (V.T.I.C. Art. 21.28, Sec. 11(f).)

7 Source Law

8 (f) Open Records. Chapter 552, Government Code,
9 shall not apply to any records of a receivership
10 estate, or to the records of an insurance company prior
11 to its receivership, held by the receiver or by a
12 special deputy receiver under this Article.

13 Revisor's Note

14 Section 11(f), V.T.I.C. Article 21.28, refers to
15 records held by the "receiver or by a special deputy
16 receiver." The revised law omits the reference to the
17 special deputy receiver as unnecessary because, in
18 accordance with the portion of Section 2(a), V.T.I.C.
19 Article 21.28, revised in this chapter as Section
20 442.051, the special deputy receiver acts as receiver.
21 Similar changes are made in this context throughout
22 this chapter.

23 [Sections 442.406-442.450 reserved for expansion]

24 SUBCHAPTER J. AUDITS

25 Revised Law

26 Sec. 442.451. AUDITS OR INVESTIGATIONS OF RECEIVER, SPECIAL
27 DEPUTY RECEIVER, OR GUARANTY ASSOCIATION. (a) The commissioner
28 shall adopt rules, after submitting the rules to the state auditor
29 for review and comment, prescribing the audits required for the
30 receiver, each special deputy receiver, and each guaranty
31 association established under Chapter 462, 463, or 2602. The rules
32 must include provisions relating to the scope, frequency, reporting
33 requirements, and cost of audits.

34 (b) As determined necessary by the commissioner or the state
35 auditor to supplement audits conducted under rules adopted under
36 Subsection (a), the state auditor may conduct audits or

1 investigations, as defined by Sections 321.0131-321.0136,
2 Government Code, of the receiver, each special deputy receiver, and
3 each guaranty association described by Subsection (a). The audited
4 or investigated entity shall reimburse the state auditor for costs
5 associated with the audit or investigation. (V.T.I.C. Art. 21.28,
6 Secs. 12(j), (k).)

7 Source Law

8 (j) The Board shall adopt rules prescribing the
9 audit coverage required for the receiver, each special
10 deputy receiver appointed under this section, and each
11 guaranty association established under Article 9.48,
12 21.28-C, or 21.28-D of this code. Such rules shall
13 include, but not be limited to, provisions relating to
14 the scope, frequency, reporting requirements, and cost
15 of audits, and shall be submitted to the state auditor
16 for review and comment prior to adoption.

17 (k) The state auditor is authorized to conduct
18 audits, as defined by Sections 321.0131 through
19 321.0136, Government Code, of the receiver, each
20 special deputy receiver appointed under this section,
21 and each guaranty association established under
22 Article 9.48, 21.28-C, or 21.28-D of this code, as the
23 commissioner or the state auditor determines to be
24 necessary to supplement audits conducted under
25 Subsection (j) of this section. Costs associated with
26 any such audit shall be reimbursed to the state auditor
27 by the audited entity.

28 Revisor's Note

29 (1) Section 12(j), V.T.I.C. Article 21.28,
30 refers to "include, but not be limited to." The
31 revised law omits "but not be limited to" as
32 unnecessary because Section 311.005(13), Government
33 Code (Code Construction Act), applicable to the
34 revised law, and Section 312.011(19), Government Code,
35 provide that "includes" and "including" are terms of
36 enlargement and not of limitation and do not create a
37 presumption that components not expressed are
38 excluded.

39 (2) Section 12(k), V.T.I.C. Article 21.28,
40 refers to "audits, as defined by Sections 321.0131
41 through 321.0136, Government Code." Section 321.0136,
42 Government Code, defines "investigation."
43 Accordingly, the revised law refers to "audits or

1 investigations" as defined by those sections.

2 Revised Law

3 Sec. 442.452. PLAN AND REPORT REGARDING AUDIT OF RECEIVER.

4 (a) The state auditor may conduct an audit of the receiver in
5 accordance with the audit plan under Chapter 321, Government Code.
6 The state auditor shall conduct the audit in the manner provided by
7 that chapter.

8 (b) The state auditor's report of an audit under this
9 section may include:

10 (1) an analysis of:

11 (A) the overall performance of the receiver;

12 (B) the receiver's financial operations and
13 condition;

14 (C) the receipts and expenditures made in
15 connection with each audited receivership;

16 (D) the adequacy of the receiver's bond in
17 relation to assets, receipts, and expenditures; and

18 (E) the feasibility of using attorneys employed
19 by the receiver in all litigation;

20 (2) the amount of money made available to the receiver
21 by a guaranty association in connection with each audited
22 receivership and a detail of the purpose and manner of expenditure
23 of the money;

24 (3) the ratio of the total amount of paid claims to the
25 total costs incurred in connection with each audited receivership;
26 and

27 (4) the ratio of the receiver's administrative
28 expenses to the total costs incurred in connection with each
29 audited receivership.

30 (c) The state auditor shall file:

31 (1) copies of the auditor's report in the manner
32 required by Section 321.014, Government Code; and

33 (2) an additional copy of the report with the
34 department. (V.T.I.C. Art. 21.28, Secs. 12(d), (e), (f).)

Source Law

(d) Audit. The state auditor may conduct an audit of the liquidator in accordance with the audit plan reviewed and approved by the legislative audit committee. The audits authorized by this subsection shall be conducted in the manner provided by Chapter 321, Government Code.

(e) Contents of Auditor's Report. The state auditor's report of the audit authorized by Subsection (d) of this section may include:

(1) an analysis of the overall performance of the liquidator;

(2) an analysis of the liquidator's financial operations and condition;

(3) an analysis of receipts and expenditures made in connection with each audited receivership and an analysis of the adequacy of the receiver's bond in relation to assets, receipts, and expenditures;

(4) the amount of funds made available to the liquidator by a guaranty association in connection with each audited receivership and a detail of the purpose and manner of expenditure of such funds;

(5) the ratio of the total amount of claims paid to the total costs incurred in connection with each audited receivership;

(6) the ratio of the liquidator's administrative expenses to the total costs incurred in connection with each audited receivership; or

(7) an analysis of the feasibility of using attorneys who are employees of the liquidator in all litigation.

(f) Filing of Auditor's Reports. Copies of the auditor's report shall be filed in the manner required by Section 321.014, Government Code. An additional copy of the report shall be filed with the board and the commissioner.

Revisor's Note

Section 12(d), V.T.I.C. Article 21.28, authorizes the state auditor to conduct an audit of the receiver in accordance with the audit plan "reviewed and approved by the legislative audit committee" and also requires the state auditor to conduct the audit in the manner provided by Chapter 321, Government Code. The revised law substitutes a reference to Chapter 321, Government Code, for the quoted language because the audit is required to be conducted under that chapter and Section 321.013(c), Government Code, requires that the audit plan be reviewed and approved by the legislative audit committee.

1 reasons for that determination instead of filing an application
2 under this section. A statement under this subsection is
3 considered to be an application by the receiver for purposes of this
4 section. (V.T.I.C. Art. 21.28, Sec. 7A(a).)

5 Source Law

6 Sec. 7A. (a) Within 120 days of the
7 commencement of the insolvency proceeding against an
8 impaired insurer, the liquidator or a special deputy
9 receiver appointed under this Article may make
10 application to the court for approval of a proposal to
11 disburse assets out of marshaled assets, from time to
12 time as such assets become available, to a guaranty
13 association or foreign guaranty association having
14 Class 1 or Class 2 claims against the estate of the
15 impaired insurer because of such insolvency. If the
16 receiver or special deputy receiver fails to make such
17 application within 120 days, the guaranty association
18 may submit an application to the court requesting that
19 the receiver or special deputy receiver submit a
20 proposal to disburse assets. If the liquidator or
21 special deputy receiver determines that there are
22 insufficient assets to disburse, the application
23 required by this section shall be considered satisfied
24 by a filing by the liquidator or special deputy
25 receiver stating the reasons for this determination.

26 Revisor's Note

27 (1) Section 7A(a), V.T.I.C. Article 21.28,
28 authorizes the receiver to "disburse" assets. Other
29 sections of Article 21.28 refer to the "disbursement"
30 of assets and use other similar phrases. The revised
31 law substitutes "distribute" for "disburse" in this
32 context for consistency in use of terminology.
33 Similar changes are made throughout this chapter.

34 (2) Section 7A(a), V.T.I.C. Article 21.28,
35 refers to Class 1 or Class 2 claims "against the estate
36 of the impaired insurer because of such insolvency."
37 The revised law omits the quoted language as
38 unnecessary because Class 1 and Class 2 claims under
39 this chapter are categories of claims established
40 under Section 442.551 and are brought against the
41 estate of an impaired insurer. Claims are brought
42 against an insurer under this chapter because of the
43 insurer's insolvency. Therefore, a Class 1 or Class 2

1 claim could not be brought against anything other than
2 the impaired insurer's estate because of the
3 insolvency.

4 Revised Law

5 Sec. 442.502. CONTENTS OF PROPOSAL TO DISTRIBUTE
6 ASSETS. (a) A proposal to distribute assets under Section
7 442.501 must include provisions for:

8 (1) reserving amounts sufficient to allow the payment
9 of Class 1 claims;

10 (2) to the extent the assets of the insolvent insurer
11 allow any payment of Class 2 claims, reserving amounts sufficient
12 to provide equal pro rata distributions to the Class 2 claimants
13 other than the guaranty associations;

14 (3) distributing the assets marshalled as of the date
15 of the proposal and distributing other assets as they become
16 available;

17 (4) equitably allocating distributions among guaranty
18 associations and foreign guaranty associations entitled to
19 distributions, including providing for:

20 (A) distributions to the associations in amounts
21 estimated to be at least equal to the claim payments made or to be
22 made by the associations for which the associations could assert a
23 claim against the receiver; and

24 (B) distributions for the pro rata amount of the
25 associations' Class 2 claims if the assets, as they become
26 available for distribution, do not equal or exceed the amount of the
27 claim payments made or to be made by the associations; and

28 (5) with regard to an insolvent insurer writing life
29 or health insurance or annuities, distributing the assets to:

30 (A) a guaranty association or foreign guaranty
31 association covering life or health insurance or annuities; or

32 (B) any other entity or organization reinsuring,
33 assuming, or guaranteeing insurance policies or contracts under the
34 laws creating an association described by Paragraph (A).

1 (b) The proposal to distribute assets must also include
2 provisions that require:

3 (1) the receiver to obtain from each guaranty
4 association described by Subsection (a)(4) an agreement to return
5 to the receiver on request and on approval by the court any
6 previously distributed assets, together with income on the assets,
7 required to pay Class 1 claimants and any federal claimants
8 asserting priority claims; and

9 (2) each guaranty association or foreign guaranty
10 association to make a full report to the receiver, as requested by
11 the receiver but not more frequently than quarterly, accounting
12 for:

13 (A) the assets distributed to the association;

14 (B) all distributions made from those assets;

15 (C) any interest earned by the association on
16 those assets; and

17 (D) any other matter as the court directs.

18 (c) A guaranty association or foreign guaranty association
19 is not required to provide a bond under Subsection (b)(1).
20 (V.T.I.C. Art. 21.28, Secs. 7A(b), (c), (d).)

21 Source Law

22 (b) Such proposal shall, at a minimum, include
23 provisions for:

24 (1) reserving amounts sufficient to allow
25 the payment of Class 1 claims, and to the extent the
26 assets of the insolvent insurer will allow any payment
27 to be made on Class 2 claims, reserving amounts
28 sufficient to provide equal pro-rata distributions to
29 the Class 2 claimants other than the guaranty
30 associations;

31 (2) disbursement of the assets marshaled
32 to date and the subsequent distribution of assets as
33 they become available;

34 (3) equitable allocation of disbursements
35 to each of the guaranty associations and foreign
36 guaranty associations entitled thereto;

37 (4) the securing of the liquidator or
38 special deputy receiver from each of the associations
39 entitled to disbursements pursuant to this section of
40 an agreement to return to the liquidator upon request
41 and approval by the court such assets, together with
42 income on assets previously disbursed, as may be
43 required to pay Class 1 claimants and any federal
44 claimants asserting priority claims. No bond shall be
45 required of any such association; and

46 (5) a full report to be made by each

1 association to the liquidator or special deputy
2 receiver, as requested by the liquidator or special
3 deputy receiver, but no more frequently than
4 quarterly, accounting for the assets so disbursed to
5 the association, all disbursements made therefrom, any
6 interest earned by the association on such assets and
7 any other matter as the court may direct.

8 (c) The proposal submitted by the liquidator or
9 special deputy receiver shall provide for
10 disbursements to the associations in amounts estimated
11 at least equal to the claim payments made or to be made
12 thereby for which such associations could assert a
13 claim against the liquidator, and shall further
14 provide that if the assets available for disbursement
15 from time to time do not equal or exceed the amount of
16 such claim payments made or to be made by the
17 association, then disbursements shall be made for the
18 pro-rata amount of the association's Class 2 claim.

19 (d) The proposal submitted by the liquidator or
20 special deputy receiver shall, with respect to an
21 insolvent insurer writing life or health insurance or
22 annuities, provide for disbursement of assets to any
23 guaranty association or foreign guaranty association
24 covering life or health insurance or annuities or to
25 any other entity or organization reinsuring, assuming,
26 or guaranteeing policies or contracts of insurance
27 under the acts creating such associations.

28 Revised Law

29 Sec. 442.503. NOTICE OF APPLICATION. (a) The receiver
30 shall give notice of an application for approval of a proposal to
31 distribute assets to a guaranty association or foreign guaranty
32 association in, and to the commissioner of insurance of, each of the
33 states. Notice under this subsection must be deposited in the
34 United States certified mail, first class postage prepaid, at least
35 30 days before the date the application is submitted to the court.

36 (b) The receiver shall also give notice of the application
37 to reasonably identifiable Class 1 and Class 2 claimants. Notice
38 under this subsection must be given in a manner the court considers
39 appropriate, including notice by publication.

40 (c) The court may act on the application if:

41 (1) notice has been given as provided by this section;
42 and

43 (2) the receiver's proposal to distribute assets
44 complies with this subchapter. (V.T.I.C. Art. 21.28, Sec. 7A(e).)

45 Source Law

46 (e) Notice of the application shall be given to
47 the association in and to the commissioners of
48 insurance of each of the states. Notice shall be
49 considered to have been given when deposited in the

1 United States certified mail, first class postage
2 prepaid, at least 30 days prior to the submission of
3 the application to the court. Action of the
4 application may be taken by the court if notice has
5 been given and if the liquidator's or special deputy
6 receiver's proposal complies with the requirements of
7 this section. Notice of the application shall be given
8 to those Class 1 and Class 2 claimants that are
9 reasonably ascertainable in a manner deemed
10 appropriate by the court, including notice by
11 publication.

12 [Sections 442.504-442.550 reserved for expansion]

13 SUBCHAPTER L. DISTRIBUTION OF ASSETS

14 Revised Law

15 Sec. 442.551. PRIORITY OF CLAIMS FOR DISTRIBUTION OF
16 ASSETS. (a) The priorities provided by this section are
17 established to:

18 (1) provide for the orderly liquidation of a
19 receivership estate; and

20 (2) further the protection of policyholders and
21 persons making claims under insurance policies.

22 (b) The priority of distribution of assets from the
23 insurer's estate must be in accordance with:

24 (1) the distribution plan approved by the court under
25 Subchapter K; and

26 (2) the order of each class as provided by this
27 section.

28 (c) Each claim in each class must be paid in full, or an
29 adequate amount of money must be retained for that payment, before a
30 payment is made for a claim in the next class.

31 (d) Subclasses may not be established within a class.

32 (e) The classes of claims are as follows:

33 (1) Class 1:

34 (A) all of the receiver's, conservator's, and
35 supervisor's costs and expenses of administration, including
36 repayment of any money spent by the receiver under Section 442.607;

37 (B) all of a guaranty association's or foreign
38 guaranty association's costs and expenses of administration
39 related to a receivership estate and all of the expenses of that

1 association in handling claims; and

2 (C) claims of secured creditors to the extent of
3 the value of the security as provided by Section 442.554;

4 (2) Class 2:

5 (A) all claims by policyholders, beneficiaries,
6 and insureds, and liability claims against insureds covered under
7 insurance policies and contracts issued by the insurer; and

8 (B) all claims by a guaranty association or a
9 foreign guaranty association that are payments of proper
10 policyholder claims;

11 (3) Class 3: claims of the federal government that are
12 not included in Class 2;

13 (4) Class 4: all other claims of general creditors not
14 falling within a higher priority under this subchapter, including
15 claims for taxes and debts due a state or local government that are
16 unsecured; and

17 (5) Class 5: claims of surplus or contribution note
18 holders, debenture holders, or holders of similar obligations and
19 proprietary claims of shareholders, members, or other owners
20 according to the terms of the instruments.

21 (f) For the purpose of Subsection (e)(1)(B), attorney's
22 fees incurred by a guaranty association or foreign guaranty
23 association in the defense of an insured under an insurance policy
24 issued by an impaired insurer are an expense incurred in handling a
25 claim. (V.T.I.C. Art. 21.28, Secs. 8(a)(1), (2).)

26 Source Law

27 Sec. 8. (a) Priority of Distribution of Assets.
28 (1) In order to provide for the orderly liquidation of
29 a receivership estate and to further the protection of
30 policyholders and those making claims under insurance
31 policies, the following priorities are established.
32 The priority of distribution of assets from the
33 insurer's estate shall be in accordance with the
34 disbursement plan approved by the court under Section
35 7A of this Article, and in accordance with the order of
36 each class as provided by this subsection. Every claim
37 in each class shall be paid in full or adequate funds
38 retained for such payment before the members of the
39 next class receive any payment. No subclasses shall be
40 established within any class.

41 (2) Classes of claims:

1 (A) Class 1:
2 (i) All of the receiver's,
3 conservator's, and supervisor's costs and expenses of
4 administration, including repayment of funds advanced
5 to the receiver from the abandoned property fund of the
6 department.

7 (ii) All of an insurance
8 guaranty association's or foreign insurance guaranty
9 association's costs and expenses of administration
10 related to a receivership estate and all of the
11 expenses of an insurance guaranty association or
12 foreign insurance guaranty association in handling
13 claims. For the purpose of this subparagraph,
14 attorney's fees incurred by an insurance guaranty
15 association or foreign insurance guaranty association
16 in the defense of an insured under a policy issued by
17 an impaired insurer constitute an expense incurred in
18 handling claims.

19 (iii) Secured creditors to the
20 extent of the value of the security as provided by
21 Section 8(c) of this Article.

22 (B) Class 2:

23 (i) All claims by
24 policyholders, beneficiaries, insureds, and liability
25 claims against insureds covered under insurance
26 policies and insurance contracts issued by the
27 insurer.

28 (ii) All claims by an insurance
29 guaranty association or a foreign insurance guaranty
30 association that are payments of proper policyholder
31 claims.

32 (C) Class 3: Claims of the federal
33 government not included in Class 2, above.

34 (D) Class 4: All other claims of
35 general creditors not falling within any other
36 priority under this section including claims for taxes
37 and debts due any state or local government which are
38 not secured claims.

39 (E) Class 5: Claims of surplus or
40 contribution note holders, holders of debentures or
41 holders of similar obligations and proprietary claims
42 of shareholders, members, or other owners according to
43 the terms of the instruments.

44 Revisor's Note

45 (1) Section 8(a)(2)(A)(i), V.T.I.C. Article
46 21.28, defines Class 1 claims to include the
47 receiver's, conservator's, and supervisor's costs and
48 expenses of administration, including "repayment of
49 funds advanced to the receiver from the abandoned
50 property fund of the department." Sections 8(g) and
51 (i), Article 21.28, revised in this chapter as
52 Sections 442.601, 442.603, and 442.604, provide a
53 procedure for declaring that certain unclaimed money
54 is abandoned and is the property of the Texas
55 Department of Insurance. Section 8(i), Article 21.28,

1 revised in pertinent part in this chapter as Section
2 442.604, requires the department to deposit the
3 abandoned money in accordance with Section 2(h),
4 Article 21.28, revised in this chapter as Section
5 442.110, and Section 8(j), Article 21.28, revised in
6 this chapter as Section 442.607, authorizes the
7 receiver to spend the abandoned money. In addition,
8 Section 8A, V.T.I.C. Article 21.28, revised in this
9 chapter as Sections 442.605-442.607, provides a
10 similar procedure for declaring that proceeds derived
11 from certain unclaimed assets are abandoned and are
12 the property of the department. Section 8A also
13 requires the department to deposit the proceeds in
14 accordance with Section 2(h), Article 21.28, revised
15 in this chapter as Section 442.110, and states that
16 "[s]uch funds may be used as provided in Section 8(j)
17 of this Article." Because Section 8(j), Article
18 21.28, revised in this chapter in Section 442.607,
19 provides the authority for the receiver to spend
20 abandoned money, and because the described provisions
21 of Article 21.28 do not refer to an "abandoned property
22 fund of the department," the revised law substitutes a
23 cross-reference to Section 442.607 for the reference
24 to the "abandoned property fund of the department."

25 (2) Section 8(a)(3), V.T.I.C. Article 21.28,
26 states that the provisions of Section 8(a), Article
27 21.28, are severable from each other. The revised law
28 omits that provision because it duplicates Section
29 311.032, Government Code (Code Construction Act),
30 applicable to the revised law. That provision states
31 that a provision of a statute is severable from each
32 other provision of the statute that can be given
33 effect. The omitted law reads:

34 (3) If any provision of this

1 subsection or the application of any
2 provision of this subsection to any person
3 or circumstance is held invalid, that
4 invalidity does not affect the other
5 provisions or applications of this
6 subsection.

7 Revised Law

8 Sec. 442.552. PAYMENT OF WAGES OF EMPLOYEES OF INSURER
9 SUBJECT TO TEMPORARY RESTRAINING ORDER. (a) The receiver shall pay
10 as a Class 1 claim under Section 442.551 wages owed to employees of
11 an insurer against which a temporary restraining order has been
12 issued under this chapter for services rendered during the period
13 covered by the order.

14 (b) The receiver shall pay for services under Subsection (a)
15 at the rate and in the same manner as if paid by the insurer.
16 (V.T.I.C. Art. 21.28, Sec. 6 (part).)

17 Source Law

18 Sec. 6. The receiver shall pay wages actually
19 owed to employees of an insurer against whom a
20 temporary restraining order has been issued under this
21 Article for services rendered during the period
22 covered by the temporary restraining order as a Class 1
23 claim as provided by Section 8(a) of this Article.
24 Payment for those services must be made at the rate and
25 in the same manner as if paid by the insurer. . . .

26 Revised Law

27 Sec. 442.553. PAYMENT OF WAGES OF EMPLOYEES OF INSURER
28 SUBJECT TO TEMPORARY INJUNCTION. (a) The receiver may pay wages
29 owed to employees of an insurer against which a temporary
30 injunction has been issued under this chapter for services rendered
31 after the issuance of the injunction.

32 (b) Payment for services under Subsection (a) is an expense
33 of administration. (V.T.I.C. Art. 21.28, Sec. 6 (part).)

34 Source Law

35 Sec. 6. . . . The receiver may pay wages
36 actually owed to employees of an insurer against whom a
37 temporary injunction has been issued under this
38 Article for services rendered after the issuance of
39 the temporary injunction. Payment for those services
40 is made at the discretion of the receiver and as an
41 expense of administration.

42 Revised Law

43 Sec. 442.554. SECURED CREDITOR. (a) The owner of a secured

1 claim against an insurer for which a receiver has been appointed in
2 any state may surrender the owner's security and file a claim as a
3 general creditor, or the claim may be discharged by resort to the
4 security.

5 (b) If a claim described by Subsection (a) is discharged by
6 resort to the security, any deficiency shall be treated as a claim
7 against the general assets of the insurer on the same basis as a
8 claim of an unsecured creditor. If the amount of the deficiency was
9 adjudicated in an ancillary delinquency proceeding as provided by
10 Subchapter P or by a court of competent jurisdiction in a proceeding
11 in which the domiciliary receiver was provided with notice and an
12 opportunity for hearing, the amount is conclusive. If the amount
13 was not adjudicated as provided by this subsection, the amount
14 shall be determined in the delinquency proceeding in the
15 domiciliary state.

16 (c) The value of any security held by a secured creditor
17 shall be determined under supervision of the court by:

18 (1) conversion of the security into money according to
19 the terms of the agreement under which the security was delivered to
20 the creditor; or

21 (2) agreement, arbitration, compromise, or litigation
22 between the creditor and the receiver. (V.T.I.C. Art. 21.28, Sec.
23 8(c).)

24 Source Law

25 (c) Secured Creditor. (1) The owner of a
26 secured claim against an insurer for which a receiver
27 has been appointed in this or any other state may
28 surrender his security and file his claim as a general
29 creditor, or the claim may be discharged by resort to
30 the security, in which case the deficiency, if any,
31 shall be treated as a claim against the general assets
32 of the insurer on the same basis as claims of unsecured
33 creditors. If the amount of the deficiency has been
34 adjudicated in ancillary proceedings as provided in
35 this chapter, or if it has been adjudicated by a court
36 of competent jurisdiction in a proceeding in which the
37 domiciliary receiver has had notice and an opportunity
38 to be heard, such amount shall be conclusive;
39 otherwise the amount shall be determined in the
40 delinquency proceeding in the domiciliary state.

41 (2) The value of any security held by a
42 secured creditor shall be determined under supervision
43 of the court by:

1 (A) converting the security into
2 money according to the terms of the agreement pursuant
3 to which the security was delivered to the creditor; or
4 (B) by agreement, arbitration,
5 compromise, or litigation between the creditor and the
6 receiver.

7 Revisor's Note

8 Section 8(c)(1), V.T.I.C. Article 21.28, refers
9 to the adjudication of a deficiency in an ancillary
10 proceeding as provided "in this chapter," meaning
11 V.T.I.C. Chapter 21. Section 13, V.T.I.C. Article
12 21.28, revised in this chapter as Subchapter P, is
13 included in Chapter 21 and governs ancillary
14 delinquency proceedings. The revised law is drafted
15 accordingly.

16 Revised Law

17 Sec. 442.555. DIVIDEND PAYMENTS. (a) On the direction and
18 approval of the court and in accordance with the priorities
19 provided by this subchapter, the receiver may make periodic
20 dividend payments, including payments of policyholder claims, to
21 facilitate the rehabilitation, liquidation, conservation, or
22 dissolution of an insurer.

23 (b) The receiver at all times shall reserve sufficient
24 assets to pay the expenses of administration. (V.T.I.C. Art.
25 21.28, Sec. 8(b).)

26 Source Law

27 (b) Dividend Payments. On the direction and
28 approval of the court and pursuant to the priorities
29 provided by this section, the receiver may make
30 periodic dividend payments, including payments of
31 policyholder claims, for the purpose of facilitating
32 the rehabilitation, liquidation, conservation, or
33 dissolution of an insurer. The receiver at all times
34 shall reserve sufficient assets for the payment of the
35 expenses of administration.

36 Revised Law

37 Sec. 442.556. CLAIMANTS OF OTHER STATES OR FOREIGN
38 COUNTRIES. (a) If a claimant of another state or of a foreign
39 country is entitled to or receives a dividend on the claim out of a
40 statutory deposit or the proceeds of a bond or other asset located
41 in that state or foreign country, the claimant is not entitled to

1 share in the distribution of any additional dividend from the
2 receiver until all other claimants of the same class receive an
3 equal dividend on their claims, regardless of their residence or
4 the location of the acts or contracts on which the claims are based.

5 (b) After the other claimants of the same class receive an
6 equal dividend on their claims, the claimant of the other state or
7 of the foreign country is entitled to share in the distribution of
8 additional dividends by the receiver, along with and in the same
9 manner as all other creditors of the same class, regardless of their
10 residence. (V.T.I.C. Art. 21.28, Sec. 8(e).)

11 Source Law

12 (e) Foreign Claimants. If any claimant of
13 another state or foreign country shall be entitled to
14 or shall receive a dividend upon his claim out of a
15 statutory deposit or the proceeds of any bond or other
16 asset located in such other state or foreign country,
17 then such claimants shall not be entitled to any
18 further dividend from the receiver until and unless
19 all other claimants of the same class, irrespective of
20 residence or place of the acts or contracts upon which
21 their claims are based, shall have received an equal
22 dividend upon their claims; and after such
23 equalization, such claimants shall be entitled to
24 share in the distribution of further dividends by the
25 receiver, along with and like all other creditors of
26 the same class, wheresoever residing.

27 Revised Law

28 Sec. 442.557. SETOFF OF DIVIDEND AMOUNT. On the
29 declaration of a dividend, the receiver shall apply the amount of
30 the dividend against any debt owed to the insurer by the person
31 entitled to the dividend. (V.T.I.C. Art. 21.28, Sec. 8(f).)

32 Source Law

33 (f) Setoff by Receiver. Upon the declaration of
34 a dividend, the receiver shall apply the amount of such
35 dividend against any indebtedness owed to the insurer
36 by the person entitled to such dividend.

37 Revised Law

38 Sec. 442.558. CLAIMS UNDER SEPARATE ACCOUNTS ESTABLISHED BY
39 DOMESTIC LIFE INSURANCE COMPANIES. (a) Each claim under a separate
40 account established under Chapter 1152 shall be satisfied out of
41 the portion of the assets in the separate account that is equal to
42 the reserves maintained in the account for the applicable

1 contracts.

2 (b) To the extent reserves maintained in a separate account
3 exceed the amounts needed to satisfy claims under the applicable
4 contracts, the excess shall be treated as general assets of the
5 domestic life insurance company. (V.T.I.C. Art. 21.28, Sec. 8(k)
6 (part).)

7 Source Law

8 (k) Every claim under a separate account
9 established under Article 3.75 of this code, providing
10 that the income, gains, and losses, realized and
11 unrealized, from assets allocated to the separate
12 account shall be credited to or charged against the
13 account, without regard to other income, gains, or
14 losses of the life insurance company, shall be
15 satisfied out of the assets in the separate account
16 equal to the reserves maintained in such account for
17 the contracts. . . . To the extent, if any, reserves
18 maintained in the separate account are in excess of the
19 amounts needed to satisfy claims under the separate
20 account contracts, the excess shall be treated as
21 general assets of the life insurance company.

22 Revisor's Note

23 (1) Section 8(k), V.T.I.C. Article 21.28,
24 refers to a separate account established under
25 V.T.I.C. Article 3.75, "providing that the income,
26 gains, and losses, realized and unrealized, from
27 assets allocated to the separate account shall be
28 credited to or charged against the account, without
29 regard to other income, gains, or losses of the life
30 insurance company." Article 3.75 is revised in this
31 code as Chapter 1152. The revised law omits the quoted
32 language as unnecessary because it duplicates Section
33 1152.057 of this code, which requires a life insurance
34 company to credit to or charge against a separate
35 account the income, gain, or loss, realized or
36 unrealized, from an asset allocated to the account
37 without regard to other income, gains, or losses of the
38 company.

39 (2) Section 8(k), V.T.I.C. Article 21.28,
40 provides that to the extent reserves maintained in a

1 separate account established under V.T.I.C. Article
2 3.75 exceed the amounts needed to satisfy claims under
3 the applicable contracts, the excess is treated as
4 general assets of the "life insurance company." The
5 revised law substitutes "domestic life insurance
6 company" for "life insurance company" because Article
7 3.75, which is revised in this code as Chapter 1152,
8 applies only to domestic life insurance companies.

9 (3) Section 8(k), V.T.I.C. Article 21.28,
10 provides that to the extent provided under contracts
11 established under V.T.I.C. Article 3.75, the portion
12 of the assets of a separate account equal to the
13 reserves and other contract liabilities for the
14 separate account is not chargeable with liabilities
15 arising out of any other business of the life insurance
16 company that owns the account. The revised law omits
17 that provision as unnecessary because it duplicates
18 Section 1152.059 of this code, which provides that to
19 the extent provided under the applicable contracts,
20 the portion of a separate account's assets equal to the
21 reserves and other contract liabilities regarding that
22 account is not chargeable with a liability arising out
23 of any other business of the life insurance company.
24 The omitted law reads:

25 (k) . . . To the extent provided
26 under contracts established under Article
27 3.75 of this code, that portion of the
28 assets of any separate account equal to the
29 reserves and other contract liabilities for
30 the separate account is not chargeable with
31 liabilities arising out of any other
32 business of the company. . . .

33 Revised Law

34 Sec. 442.559. INTEREST. Interest does not accrue on a claim
35 after the date of the commencement of a delinquency proceeding.
36 (V.T.I.C. Art. 21.28, Sec. 8(d).)

1 Source Law

2 (d) Interest. Interest shall not accrue on any
3 claim subsequent to the date of the commencement of
4 delinquency proceedings.

5 [Sections 442.560-442.600 reserved for expansion]

6 SUBCHAPTER M. UNCLAIMED ASSETS

7 Revised Law

8 Sec. 442.601. DELIVERY OF UNCLAIMED MONEY TO DEPARTMENT.

9 (a) Except as provided by Subsection (b), any unclaimed dividend on
10 an approved claim, unclaimed returned assessment, or other
11 unclaimed money that is subject to distribution to a claimant,
12 policyholder, or other person and that remains in the possession of
13 the receiver after payment of the final dividend shall be delivered
14 to the department at the time the receivership is closed.

15 (b) If a final dividend is paid less than 90 days before the
16 date the receivership is closed, the receiver may continue, for a
17 period not to exceed 90 days from the date the receivership is
18 closed, any bank account of the receivership from which any
19 unclaimed dividend might be paid, before the receiver delivers the
20 unclaimed dividend to the department.

21 (c) The department shall deposit the money in trust in an
22 account to be maintained with the comptroller. (V.T.I.C. Art.
23 21.28, Sec. 8(g).)

24 Source Law

25 (g) Unclaimed Funds. Unclaimed dividends on
26 approved claims, unclaimed returned assessments, and
27 all other unclaimed funds subject to distribution to
28 claimants, policyholders or other persons, remaining
29 in the receiver's hands after payment of the final
30 dividend shall be delivered to the Board at the time
31 the receivership is closed, or in the event a final
32 dividend is paid less than ninety (90) days prior to
33 the closing of the receivership, the receiver may
34 continue the bank account or accounts of such
35 receivership from which such funds might be paid, for a
36 period of time not to exceed ninety (90) days from the
37 date of the closing of said receivership, before the
38 same are so delivered to the Board. Such funds shall
39 be deposited by the Board in trust in a special account
40 to be maintained with the comptroller.

41 Revisor's Note

42 Section 8(g), V.T.I.C. Article 21.28, refers to a

1 "special" account. The revised law omits the
2 designation of the account as being "special" because
3 that designation is unnecessary. The designation of
4 an account as a special account has no legal effect.

5 Revised Law

6 Sec. 442.602. RECOVERY OF UNCLAIMED MONEY BY OWNER. (a) On
7 receipt of satisfactory written and verified proof of ownership not
8 later than the second anniversary of the date money is deposited
9 with the comptroller under Section 442.601, the department shall
10 certify that fact to the comptroller.

11 (b) On certification under Subsection (a), the comptroller
12 shall issue a warrant drawn on the state treasury for the money in
13 favor of each person entitled to the money. (V.T.I.C. Art. 21.28,
14 Sec. 8(h).)

15 Source Law

16 (h) Recovery by Owner. On receipt of
17 satisfactory written and verified proof of ownership
18 within two (2) years from the date such funds are so
19 deposited with the comptroller, the Board shall
20 certify such facts to the Comptroller, who shall issue
21 proper warrant therefor in favor of the parties
22 respectively entitled thereto, drawn on the State
23 Treasury.

24 Revisor's Note

25 Section 8(h), V.T.I.C. Article 21.28, refers to a
26 "proper" warrant. Throughout this chapter, the
27 revised law omits "proper" in this context as
28 unnecessary because the term does not add to the clear
29 meaning of the law. A document is not a warrant if it
30 is not a proper warrant.

31 Revised Law

32 Sec. 442.603. APPLICATION FOR DECLARATION OF ABANDONMENT OF
33 MONEY; NOTICE. (a) After money deposited with the comptroller
34 under Section 442.601 has remained unclaimed for two years, the
35 receiver may initiate an action to declare the money abandoned and
36 that the money is the property of the department by filing in the
37 court of competent jurisdiction in the county in which the

1 delinquency proceeding is or was pending a notice that the receiver
2 intends to declare the money abandoned and claim the money as the
3 property of the department. The action may be for all or part of the
4 money accumulated in any particular receivership.

5 (b) The notice must state:

6 (1) the name of each person entitled to the money;

7 (2) the person's last known address; and

8 (3) the nature or source and amount of the money.

9 (c) On the filing of the notice by the receiver, the court
10 shall set a date for the hearing on the application that is at least
11 20 days after the date the notice was filed and shall make a
12 notation of the date of the hearing on the notice.

13 (d) A copy of the notice with the judge's notation of the
14 date of the hearing must be posted on the courthouse door for at
15 least 20 days before the date a hearing is held on the application.
16 At least 10 days before the date set for the hearing, notice of the
17 filing of the application must be published in a newspaper of
18 general circulation in the county in which the application is
19 pending. The notice must be addressed to the owners of unclaimed
20 money in the particular receivership involved in the application
21 and must state generally that a hearing will be held on the
22 specified date to declare the money abandoned and that the money is
23 the property of the department. (V.T.I.C. Art. 21.28, Sec. 8(i)
24 (part).)

25 Source Law

26 (i) Declaration of Abandonment. After such
27 funds have remained unclaimed for two (2) years, the
28 Liquidator may initiate action to have them declared
29 to be abandoned, and the property of the State Board of
30 Insurance. Such action shall be commenced by the
31 filing by the Liquidator, in the court of competent
32 jurisdiction in the county in which the delinquency
33 proceeding is, or was pending, of a notice of his
34 intention to declare such funds to be abandoned, and
35 that he is claiming the same as the property of the
36 State Board of Insurance. Such action may be for all
37 or any part of such funds accumulated in any one
38 particular receivership. Such notice shall state the
39 name or names of the person or persons entitled
40 thereto, his or their last known address, and the
41 nature or source and amount of the fund or funds. Upon
42 the filing of such notice by the Liquidator, the court

1 shall set a date for the hearing of the application,
2 and shall make notation thereon of the date of such
3 hearing, which date shall be at least twenty (20) days
4 subsequent to the date of the filing of said notice. A
5 copy of said notice, with the judge's notation thereon
6 shall be posted on the courthouse door of said court
7 for at least twenty (20) days before a hearing is had
8 thereon. Notice of the filing of the application shall
9 be published at least once, and at least ten (10) days
10 prior to the date set for such hearing, in a newspaper
11 of general circulation in the county where the
12 application is pending. Such notice shall be
13 addressed to the true owners of unclaimed funds in the
14 particular receivership involved in the application
15 and shall state generally that a hearing shall be had
16 on the date specified for the purpose of declaring such
17 funds to be abandoned and the property of the State
18 Board of Insurance. . . .

19 Revisor's Note

20 (1) Section 8(i), V.T.I.C. Article 21.28,
21 requires that notice of the filing of an application be
22 published "at least once." The revised law omits the
23 quoted language as unnecessary because a requirement
24 that notice be published necessarily implies that the
25 notice be published at least once.

26 (2) Section 8(i), V.T.I.C. Article 21.28,
27 refers to the "true" owners of unclaimed money. The
28 revised law omits "true" as unnecessary because the
29 word does not add to the clear meaning of the law. A
30 person who is an owner of unclaimed money is
31 necessarily a "true" owner of the money.

32 Revised Law

33 Sec. 442.604. HEARING ON APPLICATION FOR DECLARATION OF
34 ABANDONMENT OF MONEY; JUDGMENT. (a) At a hearing on an application
35 filed under Section 442.603, proof to the satisfaction of the court
36 of the following is prima facie evidence that each person entitled
37 to money deposited with the comptroller under Section 442.601
38 intends to abandon the money and that the department is the owner of
39 the money:

40 (1) the money, or a check for the money, was sent by
41 the receiver to the last known address of each person entitled to
42 the money;

43 (2) the money, or a check for the money, was returned

1 unclaimed or the check for the money was not cashed;

2 (3) the money was delivered to the department as
3 required by Section 442.601;

4 (4) the money has remained unclaimed for two years;
5 and

6 (5) notice of the filing of the application was
7 published as required by Section 442.603.

8 (b) On a finding by the court under Subsection (a), the
9 court may render judgment accordingly. On receipt of the judgment,
10 the department shall certify that fact to the comptroller.

11 (c) On certification under Subsection (b), the comptroller
12 shall issue a warrant for the money in favor of the department. The
13 department shall promptly deposit the money in accordance with
14 Section 442.110, except that the money derived from one insurer is
15 not required to be kept separate from money derived from another
16 insurer. (V.T.I.C. Art. 21.28, Sec. 8(i) (part).)

17 Source Law

18 (i) . . . Upon the hearing on such application
19 of the Liquidator, proof to the satisfaction of the
20 court:

21 (1) That such funds, or the checks
22 therefor, had previously been sent by the Receiver to
23 the last known address of the person or persons
24 entitled thereto;

25 (2) That such funds, or the checks
26 therefor, had been returned unclaimed or that the
27 check or checks therefor had not been cashed;

28 (3) That the funds had been delivered to
29 the Board as required by Subsection (g) above;

30 (4) That such money remained unclaimed
31 with the Board for two (2) years; and

32 (5) That notice of the filing of the
33 application has been published as herein provided,
34 shall be prima facie evidence of the intention of the
35 person or persons entitled thereto to abandon the
36 same, and that the Board is the rightful owner thereof.
37 Upon such finding by the court, the court shall be
38 authorized to render judgment accordingly. Upon
39 receipt of such judgment, the Board shall certify such
40 fact to the Comptroller of Public Accounts, who shall
41 issue proper warrant therefor to the State Board of
42 Insurance. The Board shall forthwith deposit such
43 funds in accordance with the provisions of Section
44 2(h) of this Article, except that such funds derived
45 through any one insurer need not be kept separate from
46 such funds derived through any other insurer.

47 Revisor's Note

48 (1) Section 8(i)(5), V.T.I.C. Article 21.28,

1 refers to the "rightful" owner of unclaimed money. The
2 revised law omits "rightful" as unnecessary because
3 the word does not add to the clear meaning of the law.
4 A person who is an owner of unclaimed money is
5 necessarily a "rightful" owner of the money.

6 (2) Section 8(i)(5), V.T.I.C. Article 21.28,
7 refers to the "Comptroller of Public Accounts." The
8 revised law substitutes the term "comptroller" because
9 Section 403.001, Government Code, defines
10 "comptroller" in any state statute to mean the
11 comptroller of public accounts.

12 Revised Law

13 Sec. 442.605. USE OF CERTAIN UNLIQUIDATED ASSETS; DEPOSIT
14 OF PROCEEDS IN TRUST. (a) Any assets other than cash that remain in
15 the possession of the receiver after payment of the final dividend
16 in a receivership estate may be conveyed, transferred, or assigned
17 to the commissioner to be handled as a trust.

18 (b) The commissioner may convey, transfer, and assign any
19 assets, including causes of action, judgments, and claims, and
20 settle or release causes of action, judgments, claims, and liens on
21 terms and for amounts the commissioner considers to be in the best
22 interest of the trust, regardless of whether the assets have
23 previously or may subsequently come into the commissioner's
24 possession.

25 (c) From proceeds derived from any assets described by
26 Subsection (b), the commissioner or the special deputy receiver
27 shall defray the costs incident to the sale, settlement, release,
28 or other transaction by which the proceeds are obtained and deliver
29 the remainder to the department. The department shall deposit the
30 money in trust in an account to be maintained with the comptroller
31 and to be handled, disposed of, and used as provided by Sections
32 442.606 and 442.607. (V.T.I.C. Art. 21.28, Sec. 8A (part).)

33 Source Law

34 Sec. 8A. Any and all assets other than cash

1 remaining in the receiver's hands after payment of the
2 final dividend may be conveyed, transferred or
3 assigned to the commissioner to be handled as a trust.
4 The commissioner shall have authority to convey,
5 transfer, and assign any assets, including causes of
6 action, judgments, and claims, and to settle or
7 release causes of action, judgments, claims, and liens
8 on such terms and for such amounts as he deems for the
9 best interest of such trust, whether such assets have
10 heretofore or may hereafter come into his hands. From
11 proceeds derived from any such assets the commissioner
12 or the special deputy receiver shall defray the costs
13 incident to the sale, settlement, release or other
14 transaction whereby such proceeds are obtained, and
15 deliver the remainder to the Board to be deposited by
16 it in trust in a special account to be maintained with
17 the comptroller to be handled, disposed of and used as
18 follows:

19 . . .

20 Revisor's Note

21 Section 8A, V.T.I.C. Article 21.28, refers to a
22 "special" account. The revised law omits the
23 designation of the account as being "special" for the
24 reason stated in the revisor's note to Section 442.601.

25 Revised Law

26 Sec. 442.606. APPLICATION FOR DECLARATION OF ABANDONMENT OF
27 PROCEEDS IN TRUST; NOTICE AND HEARING. (a) On application by the
28 commissioner and after notice and hearing, a court of competent
29 jurisdiction of Travis County may make an order directing
30 disposition of money deposited in a trust account under Section
31 442.605(c).

32 (b) The notice must be addressed to all persons having an
33 interest, as claimants or otherwise, in the assets of the
34 particular receivership involved in the application and must state:

35 (1) the amount of the money and the receivership from
36 which the money was derived; and

37 (2) generally that a hearing will be held on the
38 specified date to determine the disposition of the money, including
39 a declaration that the money is abandoned and is the property of the
40 department.

41 (c) The notice required by Subsection (a) must be:

42 (1) posted on the courthouse door for at least 20 days
43 before the date the hearing is held; and

1 (2) published at least 10 days before the date set for
2 the hearing in a newspaper of general circulation in Travis County.

3 (d) If the court finds that money derived from a
4 receivership is sufficient to justify the reopening of the
5 receivership and the payment of a dividend, the court may enter an
6 order to that effect. If the money is insufficient for that
7 purpose, the court may declare the money abandoned.

8 (e) A certified copy of a judgment declaring the money
9 abandoned is sufficient authority for the comptroller to issue a
10 warrant for the money in favor of the department. On issuance of
11 the warrant, the department shall promptly deposit the money in
12 accordance with Section 442.110, except that money derived from one
13 insurer is not required to be kept separate from money derived from
14 another insurer. (V.T.I.C. Art. 21.28, Sec. 8A (part).)

15 Source Law

16 Sec. 8A. . . . An order directing disposition
17 of such funds may be made by a court of competent
18 jurisdiction of Travis County, Texas, upon application
19 of the commissioner, after notice and hearing. Notice
20 shall be posted on the courthouse door of said court
21 for at least twenty (20) days before a hearing is had
22 on the commissioner's application, and notice shall be
23 published at least once, and at least ten (10) days
24 prior to the date set for such hearing, in a newspaper
25 of general circulation in Travis County. Such notice
26 shall state the amount of the funds and the
27 receivership from which they were derived. It shall be
28 addressed to all persons having an interest, as
29 claimant or otherwise, in the assets of the particular
30 receivership involved in the application, and shall
31 state generally that a hearing shall be had on the date
32 specified for the purpose of determining the
33 disposition to be made of such funds, including a
34 declaration that such funds are abandoned and the
35 property of the State Board of Insurance.

36 If the court finds that funds derived from any
37 receivership are sufficient to justify re-opening of
38 the receivership and payment of a dividend, then such
39 may be ordered, but otherwise, if such funds are
40 insufficient for that purpose, the court may declare
41 such funds abandoned and a certified copy of such
42 judgment will be authority for the comptroller to
43 issue a Warrant therefor to the State Board of
44 Insurance. The Board shall forthwith deposit such
45 funds in accordance with the provisions of Section
46 2(h) of this Article, except that funds derived from
47 one insurer need not be kept separate from funds
48 derived through any other insurer.

49 . . .

1 Revisor's Note

2 Section 8A, V.T.I.C. Article 21.28, requires that
3 notice of an application be published "at least once."
4 The revised law omits the quoted language for the
5 reason stated in Revisor's Note (1) to Section 442.603.

6 Revised Law

7 Sec. 442.607. USE OF ABANDONED MONEY. (a) The receiver,
8 with the consent of the department, may spend money deposited by the
9 department under Sections 442.604 and 442.606 to:

10 (1) pay expenses of the office of the receiver that are
11 not properly chargeable to any one receivership or conservatorship
12 estate; and

13 (2) continue the administration of a receivership or
14 conservatorship by the receiver as receiver or conservator, if the
15 department considers the continuation to be in the best interest of
16 the receivership or conservatorship estate.

17 (b) Any money applied under Subsection (a)(2) to a
18 receivership estate must be repaid from the assets of that estate
19 before the payment of any additional dividends in that
20 receivership, including policyholder claims and other claims.

21 (c) Any money applied under Subsection (a)(2) to a
22 conservatorship estate must be repaid from the assets of that
23 estate before the release of that conservatorship for continued
24 operation. (V.T.I.C. Art. 21.28, Secs. 8(j), 8A (part).)

25 Source Law

26 [Sec. 8]

27 (j) Use of Abandoned Funds. Such funds so
28 deposited by the Board in accordance with Subsection
29 (i) above may be expended by the Liquidator, with the
30 consent of the Board, for the purpose of paying
31 expenses of the office of the Liquidator and/or
32 Receiver that are not properly chargeable to any one
33 receivership or conservatorship estate, and for the
34 purpose of financing continued operation of any
35 receivership or conservatorship then being
36 administered by the Liquidator as Receiver or
37 Conservator, when in the discretion of the Board it
38 appears to be in the best interest of such receivership
39 or conservatorship estate that it not be closed, and
40 that additional administration be had thereon. Any
41 funds so applied from this source to another
42 receivership or conservatorship estate are to be

1 repaid from the assets of the receivership or
2 conservatorship estate to which they were applied
3 before additional dividends, including policyholder
4 and other claims, are paid in any such receivership, or
5 before the conservatorship is released for continued
6 operation.

7 Sec. 8A. . . . [funds derived from any
8 receivership]

9 Such funds may be used as provided in Section 8(j)
10 of this Article.

11 [Sections 442.608-442.650 reserved for expansion]

12 SUBCHAPTER N. TRANSFER OR DISPOSAL OF EXCESS ASSETS

13 Revised Law

14 Sec. 442.651. TRANSFER OF REMAINING ASSETS OF STOCK
15 INSURANCE COMPANY TO AGENT. (a) After the receiver has provided
16 for unclaimed dividends and all of the liabilities of a stock
17 insurance company, the receiver shall call a meeting of the
18 shareholders of the insurer by:

19 (1) publishing notice of the meeting in one or more
20 newspapers in the county in which the principal office of the
21 insurer was located; and

22 (2) giving written notice of the meeting to each
23 shareholder of record at the shareholder's last known address.

24 (b) At the meeting, the shareholders shall appoint one or
25 more agents to take over the liquidation of the insurer for the
26 benefit of the shareholders. Voting privileges are governed by the
27 insurer's bylaws. A majority of the shares must be represented at
28 the agent's appointment. The agent or agents shall execute and file
29 with the court one or more bonds as approved by the court,
30 conditioned on the faithful performance of all the duties of the
31 trust.

32 (c) Under order of the court, the receiver shall transfer
33 and deliver to the agent or agents for continued liquidation under
34 the court's supervision all assets of the insurer remaining in the
35 possession of the receiver. After the transfer and delivery, the
36 receiver and the department, and each employee of the receiver or
37 the department, are discharged from any further liability to the
38 insurer and the creditors and shareholders of the insurer.

1 (d) This section does not permit the insurer to continue
2 engaging in the business of insurance. The charter of the insurer
3 and each certificate of authority or other permit issued under or in
4 connection with the charter are ipso facto revoked by the order of
5 the court directing the receiver to transfer and deliver the
6 remaining assets of the insurer to the agent or agents. (V.T.I.C.
7 Art. 21.28, Sec. 9(a).)

8 Source Law

9 Sec. 9. (a) Excess Assets--Stock Companies.
10 When the receiver shall have made provision for
11 unclaimed dividends and all of the liabilities of a
12 stock insurance company, he shall call a meeting of the
13 stockholders of the insurer by giving notice thereof
14 in one (1) or more newspapers in the county where the
15 principal office of the insurer was located, and by
16 written notice to the stockholders of record at their
17 last known address. At such meeting, the stockholders
18 shall appoint an agent or agents to take over the
19 affairs to continue the liquidation for benefit of the
20 stockholders. Voting privileges shall be governed by
21 the insurer's bylaws. A majority of the stock shall be
22 represented at the agent's appointment. Such agent or
23 agents shall execute and file with the court such bond
24 or bonds as shall be approved by it, conditioned on the
25 faithful performance of all the duties of the trust.
26 Under order of the court the receiver shall then
27 transfer and deliver to such agent or agents for
28 continued liquidation under the court's supervision
29 all assets of insurer remaining in his hands,
30 whereupon the receiver and the Board, and each member
31 and employee thereof, shall be discharged from any
32 further liability to such insurer and its creditors
33 and stockholders; provided, however, that nothing
34 herein contained shall be so construed as to permit the
35 insurer to continue in business as such, but the
36 charter of such insurer and all permits and licenses
37 issued thereunder or in connection therewith shall be
38 ipso facto revoked and annulled by such order of the
39 court directing the receiver to transfer and deliver
40 the remaining assets of such insurer to such agent or
41 agents.

42 Revisor's Note

43 (1) Section 9(a), V.T.I.C. Article 21.28,
44 refers to the "Board," meaning the State Board of
45 Insurance, and each "member and employee" of the
46 board. The revised law substitutes "department" for
47 "Board" for the reason stated in Revisor's Note (5) to
48 Section 442.001. Because the State Board of Insurance
49 has been abolished as explained in that revisor's note,
50 the revised law omits the reference to each "member" of

1 the board.

2 (2) Section 9(a), V.T.I.C. Article 21.28,
3 provides that under certain circumstances the charter
4 of an insurer and the permits and "licenses" issued to
5 the insurer are "revoked and annulled." The revised
6 law substitutes "certificate of authority" for
7 "licenses" for the reason stated in Revisor's Note (3)
8 to Section 442.108. Also, the revised law omits
9 "annulled" as unnecessary because, in context,
10 "annulled" is included within the meaning of
11 "revoked."

12 Revised Law

13 Sec. 442.652. DISPOSAL OF REMAINING ASSETS OF INSURER OTHER
14 THAN STOCK INSURANCE COMPANY. After the receiver has provided for
15 unclaimed dividends and all of the liabilities of an insurer other
16 than a stock insurance company, the receiver shall dispose of any
17 remaining assets as directed by the receivership court. (V.T.I.C.
18 Art. 21.28, Sec. 9(b).)

19 Source Law

20 (b) Excess Assets--Other Companies. After the
21 receiver shall have made provision for unclaimed
22 dividends and all of the liabilities of any insurer
23 other than a stock insurance company, he shall dispose
24 of any remaining assets as directed by the
25 receivership court.

26 Revised Law

27 Sec. 442.653. TRANSFER OF REMAINING ASSETS OF INSURER TO
28 GUARANTY ASSOCIATION. (a) Notwithstanding any other provision of
29 this chapter, in closing a receivership estate, a special deputy
30 receiver, on approval of the court, may transfer any remaining
31 asset, cause of action asserted on behalf of the impaired insurer,
32 judgment, claim, or lien to the appropriate guaranty association.

33 (b) A transfer under Subsection (a):

34 (1) is not a preference or voidable transfer; and

35 (2) is considered a distribution under Sections
36 442.551(a)-(d).

1 (c) If the amount realized by the guaranty association is
2 materially greater than the amount loaned by the guaranty
3 association to the receivership estate, the court may order the
4 reopening of the receivership to distribute the excess money.

5 (d) This subchapter does not transfer any liability of an
6 impaired insurer to the guaranty association that would not
7 constitute a claim payable under Chapter 462, 463, or 2602.
8 (V.T.I.C. Art. 21.28, Sec. 9(c).)

9 Source Law

10 (c) Excess Assets--Guaranty Associations.
11 Notwithstanding any other provisions of this article
12 in closing an estate, a special deputy receiver, on
13 approval of the court, may transfer any remaining
14 assets, causes of action asserted on behalf of the
15 impaired insurer, judgment, claims, or liens to the
16 appropriate guaranty association and this transfer
17 shall not be a preference or voidable transfer but
18 shall be considered a distribution under Section
19 8(a)(1) of this article. In the event the sum realized
20 by the guaranty association is materially larger than
21 the amount loaned to the estate by the guaranty
22 association, the court may order reopening of the
23 estate to disburse the excess funds. Nothing in this
24 section shall be construed as a transfer of any
25 liability of an impaired insurer to the guaranty
26 association that would not constitute a claim payable
27 under Articles 9.48, 21.28-C, or 21.28-D of this code.

28 [Sections 442.654-442.700 reserved for expansion]

29 SUBCHAPTER O. DURATION AND REOPENING OF RECEIVERSHIP

30 Revised Law

31 Sec. 442.701. LIMITATION ON DURATION OF RECEIVERSHIP. (a)
32 Except as otherwise provided by this section, each receivership or
33 other delinquency proceeding prescribed by this chapter shall be
34 administered in accordance with Section 64.072, Civil Practice and
35 Remedies Code.

36 (b) To the extent the proceeding applies to claims against a
37 workers' compensation insurance policy or a title insurance policy,
38 a receivership or other delinquency proceeding shall be
39 administered continuously for any period necessary to effect the
40 receivership's or proceeding's purposes, and any arbitrary
41 limitation on that period provided by another law of this state with
42 regard to the administration of receiverships or of corporate

1 affairs generally does not apply to the proceeding.

2 (c) Instead of the winding up and distribution of a
3 receivership estate of an insurer without capital stock, the court
4 shall order revival and reinstatement of the charter, certificates
5 of authority or other permits, franchises, and management contracts
6 or other control instruments of the insurer if the insurer's
7 remaining cash on hand and on deposit, less any outstanding
8 enforceable liabilities, exceeds the minimum amount of capital and
9 surplus prescribed for that insurer under Section 822.054, 822.202,
10 822.210, or 841.054. (V.T.I.C. Art. 21.28, Sec. 9(d).)

11 Source Law

12 (d) Limitation. Except as otherwise provided
13 by this subsection, each receivership or other
14 delinquency proceeding prescribed by this Article
15 shall be administered in accordance with Section
16 64.072, Civil Practice and Remedies Code. To the
17 extent a receivership or delinquency proceeding
18 initiated against an insurer applies to claims against
19 a workers' compensation insurance policy or a title
20 insurance policy, the receivership or delinquency
21 proceeding shall be administered continuously for
22 whatever length of time is necessary to effectuate its
23 purposes, and no arbitrary period prescribed elsewhere
24 by the laws of Texas limiting the time for the
25 administration of receiverships or of corporate
26 affairs generally shall be applicable thereto.
27 Instead of the winding up and distribution of a
28 receivership estate of an insurer without capital
29 stock, the court shall order revival and reinstatement
30 of the charter, permits, licenses, franchises, and
31 management contracts or other control instruments of
32 the insurer if the insurer's remaining cash on hand and
33 on deposit, less any outstanding valid and enforceable
34 liabilities, exceeds the minimum amount of capital and
35 surplus prescribed for that insurer under Article 2.02
36 or Section 1 of Article 3.02 of this code.

37 Revisor's Note

38 (1) Section 9(d), V.T.I.C. Article 21.28,
39 refers to a receivership or delinquency proceeding
40 "initiated against an insurer." The revised law omits
41 the quoted language as unnecessary because a
42 receivership is a form of delinquency proceeding and
43 under Section 1(b), V.T.I.C. Article 21.28, revised in
44 this chapter as Section 442.001(a)(2), a delinquency
45 proceeding is defined as a proceeding "commenced . . .
46 against an insurer" for certain purposes.

1 (2) Section 9(d), V.T.I.C. Article 21.28,
2 refers to the "licenses" of an insurer. The revised
3 law substitutes "certificates of authority" for
4 "licenses" for the reason stated in Revisor's Note (3)
5 to Section 442.108.

6 (3) Section 9(d), V.T.I.C. Article 21.28,
7 refers to "valid and enforceable" liabilities. The
8 revised law omits the reference to "valid" because the
9 term is included within the meaning of "enforceable."

10 (4) Section 9(d), V.T.I.C. Article 21.28,
11 refers to V.T.I.C. Article 2.02 and Section 1,
12 V.T.I.C. Article 3.02. Those provisions are revised
13 in various places in this code, but the pertinent
14 provisions are revised as Sections 822.054, 822.202,
15 822.210, and 841.054 of this code. The revised law is
16 drafted accordingly.

17 Revised Law

18 Sec. 442.702. REOPENING OF RECEIVERSHIP. (a) If after
19 the receivership has been closed by final order of the court the
20 receiver discovers assets not known to the receiver during the
21 receivership, the receiver shall report the receiver's findings to
22 the court.

23 (b) The court may reopen the receivership for continued
24 liquidation if the court finds that the value of the discovered
25 assets justifies the reopening. (V.T.I.C. Art. 21.28, Sec. 9(e).)

26 Source Law

27 (e) Reopening. If after the receivership shall
28 have been closed by final order of the court, the
29 liquidator shall discover assets not known to him
30 during receivership, he shall report his findings to
31 the court. It shall be within the discretion of the
32 court as to whether the value of the after-discovered
33 assets shall justify the reopening of the receivership
34 for continued liquidation.

35 [Sections 442.703-442.750 reserved for expansion]

1 SUBCHAPTER P. ANCILLARY DELINQUENCY PROCEEDINGS

2 Revised Law

3 Sec. 442.751. APPOINTMENT OF ANCILLARY RECEIVER. (a) On
4 the petition of the department, a court of competent jurisdiction
5 in this state shall appoint the commissioner as ancillary receiver
6 in this state for an insurer domiciled in another jurisdiction if a
7 receiver should be appointed for that insurer under the laws of this
8 state.

9 (b) The department:

10 (1) may file the petition on the department's own
11 initiative; and

12 (2) shall file the petition if at least 10 residents of
13 this state who have claims against the insurer file one or more
14 petitions in writing with the department requesting the appointment
15 of an ancillary receiver. (V.T.I.C. Art. 21.28, Sec. 13 (part).)

16 Source Law

17 Sec. 13. A court of competent jurisdiction in
18 this State shall, on the petition of the State Board of
19 Insurance, appoint the liquidator herein provided as
20 ancillary receiver in this State of an insurer
21 domiciliary in another state or jurisdiction when
22 under the laws of this State a receiver should be
23 appointed. The Board shall file such petition on its
24 own initiative or if ten (10) or more persons resident
25 in this State, having claims against such insurer,
26 file a petition or petitions in writing with the Board,
27 requesting the appointment of such ancillary receiver.
28 . . .

29 Revisor's Note

30 (1) Section 13, V.T.I.C. Article 21.28,
31 requires a court to appoint the "liquidator" as
32 ancillary receiver of an insurer in certain
33 situations. As stated in Revisor's Note (4) to Section
34 442.001, the position of liquidator has been
35 eliminated and the term "liquidator" in the source law
36 is defined to mean "receiver" and to include the
37 commissioner of insurance or a person designated by
38 the commissioner to serve as special deputy receiver.
39 While the revised law generally substitutes "receiver"

1 for "liquidator," in the context of Section 13, it is
2 clear that the commissioner must initially be
3 appointed as ancillary receiver. The revised law is
4 drafted accordingly.

5 (2) Section 13, V.T.I.C. Article 21.28, refers
6 to "another state or jurisdiction." The revised law
7 omits the reference to "state" because "state" is
8 included within the meaning of
9 "another . . . jurisdiction."

10 (3) Section 13, V.T.I.C. Article 21.28,
11 provides that the Texas Department of Insurance
12 "shall" file a petition with a court requesting the
13 appointment of an ancillary receiver "on its own
14 initiative" or if at least 10 resident claimants file a
15 similar petition with the department. The revised law
16 provides that the department "may" file a petition
17 with the court "on the department's own initiative" and
18 "shall" file a petition if at least 10 resident
19 claimants file a petition with the department because
20 the reference to the department's initiative implies
21 that the department has discretion whether to file a
22 petition with a court unless at least 10 resident
23 claimants file a petition with the department.

24 Revised Law

25 Sec. 442.752. POWERS AND DUTIES OF ANCILLARY RECEIVER.

26 (a) The ancillary receiver is entitled to sue for and possess the
27 assets of the insurer in this state and has the same powers and
28 duties with regard to those assets as a receiver of an insurer
29 domiciled in this state.

30 (b) On commencement of the delinquency proceeding in this
31 state, the ancillary receiver is immediately entitled to possession
32 and control of any special or statutory deposits of the insurer that
33 are located in this state. The ancillary receiver may use those
34 deposits:

1 (1) to pay expenses of the administration of the
2 receivership proceeding; and

3 (2) after paying the expenses under Subdivision (1),
4 to pay approved claims against the deposits. (V.T.I.C. Art. 21.28,
5 Sec. 13 (part).)

6 Source Law

7 Sec. 13. . . . Such ancillary receiver shall
8 have the right to sue for and reduce to possession the
9 assets of such insurer in this State, and shall have
10 the same powers and be subject to the same duties with
11 respect to such assets, as are possessed by a receiver
12 of a domiciliary insurer under the laws of this State.
13 On commencement of the delinquency proceedings in this
14 State, the ancillary receiver in this State
15 immediately is entitled to possession and control of
16 any special or statutory deposits of the delinquent
17 insurer located within this State. The ancillary
18 receiver may use those special or statutory deposits
19 first towards the payment of expenses of the
20 administration of the receivership proceedings then
21 towards the payment of approved claims against the
22 deposits. . . .

23 Revised Law

24 Sec. 442.753. COORDINATION WITH RECEIVER IN OTHER
25 STATE. If a receiver of a delinquent insurer has been appointed
26 both in this state and in another state, the receiver in this state
27 may, under supervision of the receivership court in this state and
28 regardless of whether the receiver in this state is an ancillary
29 receiver, contract with the receiver in the other state to
30 coordinate the administration of the receiverships in the interest
31 of efficiency and economy in any manner consistent with this
32 chapter. (V.T.I.C. Art. 21.28, Sec. 14.)

33 Source Law

34 Sec. 14. In cases where a receiver of any
35 delinquent insurer has been appointed both in Texas
36 and in some other state, the Texas receiver, either
37 domiciliary or ancillary, may, under supervision of
38 the Texas receivership court, contract with the
39 receiver in such other state for the administration of
40 the affairs of their respective receiverships in any
41 manner consistent with this Article which will enable
42 the respective receivers to coordinate their
43 activities in the interest of efficiency and economy.

44 Revised Law

45 Sec. 442.754. APPLICABILITY OF CHAPTER TO ANCILLARY
46 DELINQUENCY PROCEEDINGS. The conduct of ancillary delinquency

proceedings under this subchapter is subject to the other provisions of this chapter. (V.T.I.C. Art. 21.28, Sec. 13 (part).)

Source Law

Sec. 13. . . . The remaining provisions of this Article shall be applicable to the conduct of such ancillary proceedings.

[Sections 442.755-442.800 reserved for expansion]

SUBCHAPTER Q. AGENCY CONTRACTS WITH CERTAIN INSURERS

Revised Law

Sec. 442.801. REQUIRED CONTRACT PROVISION. An agency contract entered into on or after August 27, 1973, by an insurer writing fire and casualty insurance in this state must contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the insurer shall be changed on the commencement of a delinquency proceeding as defined by Chapter 442, Insurance Code, as amended. After the commencement of the delinquency proceeding, the obligation of the agent to remit premiums is limited to premiums earned before the cancellation date of insurance policies stated in the order of a court of competent jurisdiction under Chapter 442, Insurance Code, canceling the policies. The agent does not owe and may not be required to remit to the insurer or to the receiver any premiums that are unearned as of the cancellation date stated in the order.

(V.T.I.C. Art. 21.11-2, Sec. 1.)

Source Law

Art. 21.11-2

Sec. 1. Every agency contract entered into on and after the effective date of this Act by an insurance company writing fire and casualty insurance in Texas shall contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of delinquency proceedings as defined in Article 21.28, Insurance Code of Texas of 1951, as

1 amended. Subsequent to the commencement of
2 delinquency proceedings, the obligation of the agent
3 to remit premiums shall be confined to premiums earned
4 prior to the date of cancellation of policies stated in
5 the order of a court of competent jurisdiction under
6 Article 21.28 of this code canceling the policies. The
7 agent shall not owe or remit to the company or to the
8 Liquidator-Receiver any premiums that are unearned as
9 of the date of the cancellation stated in the order
10 canceling the policies.

11 Revisor's Note

12 Section 1, V.T.I.C. Article 21.11-2, refers to
13 "the effective date of this Act," meaning the
14 effective date of V.T.I.C. Article 21.11-2. That
15 article took effect August 27, 1973. The revised law
16 is drafted accordingly.

17 Revised Law

18 Sec. 442.802. DISPOSITION OF PREMIUMS. (a) On or after
19 the cancellation date of insurance policies as stated in the
20 court's order canceling the policies, the agent shall promptly
21 account to the receiver for:

22 (1) all unearned premiums to be returned to the
23 insured or the replacement coverage to be obtained for the insured;
24 and

25 (2) the earned premiums to be paid to the receiver.

26 (b) The agent shall:

27 (1) promptly return to an insured who paid the
28 premiums any unearned premiums in the possession of the agent on the
29 cancellation date of the policy; or

30 (2) with the approval of the insured, use the unearned
31 premiums to purchase new coverage for the insured with a different
32 insurer.

33 (c) The agent shall promptly remit to the receiver any
34 earned premiums in the possession of the agent. (V.T.I.C. Art.
35 21.11-2, Sec. 2.)

36 Source Law

37 Sec. 2. On or after the effective date of the
38 cancellation of policies stated in the court's order
39 canceling policies, the agent shall promptly account
40 to the receiver for all premiums to be returned to the
41 insured or the replacement coverage to be obtained and

the earned premiums to be paid to the receiver. Any of those unearned premiums in the hands of the agent on the effective date of the policy cancellations shall be returned promptly by the agent to the insured who paid them or, with the approval of the insured, shall be used to purchase new coverage for the insured with a different insurer. Any of the earned premiums in the hands of the agent shall be remitted promptly to the receiver.

Revised Law

Sec. 442.803. EFFECT OF SUBCHAPTER ON ACTION BY RECEIVER AGAINST AGENT. This subchapter does not prejudice a cause of action by the receiver against an agent to recover:

- (1) unearned premiums that were not returned to policyholders; or
- (2) earned premiums that were not promptly remitted to the receiver. (V.T.I.C. Art. 21.11-2, Sec. 3.)

Source Law

Sec. 3. This article does not prejudice any cause of action by the receiver against any agent for the recovery of unearned premiums that were not returned to policyholders and earned premiums that were not promptly remitted to the receiver.

Revised Law

Sec. 442.804. AGENT NOT RECEIVER'S AGENT. This subchapter does not render the agent an agent of the receiver for earned or unearned premiums. (V.T.I.C. Art. 21.11-2, Sec. 4.)

Source Law

Sec. 4. This article may not be construed to render the agent an agent of the receiver for earned or unearned premiums.

[Chapters 443-460 reserved for expansion]

SUBTITLE D. GUARANTY ASSOCIATIONS

CHAPTER 461. GENERAL PROVISIONS

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Sec. 461.003. FORM OF STATEMENT; PROHIBITION 576

CHAPTER 461. GENERAL PROVISIONS

Revised Law

Sec. 461.001. APPLICABILITY OF CHAPTER. (a) Except as

provided by Subsection (b), this chapter applies to an insurance policy, contract, certificate, evidence of coverage, or application delivered or issued for delivery in this state that is not covered by an insurance guaranty fund or other solvency protection arrangement authorized by this code.

(b) This chapter does not apply to:

(1) a fidelity, surety, or guaranty bond; or

(2) marine insurance as defined by Section 1807.001.

(V.T.I.C. Art. 21.28-E, Secs. (a) (part), (c).)

Source Law

Art. 21.28-E. (a) Each insurance policy or contract or application or certificate or evidence of coverage, other than a fidelity, surety, or guaranty bond, delivered or issued for delivery in this state that is not covered by an insurance guaranty fund or other solvency protection arrangement authorized by this code

(c) The provisions of this article shall not apply to marine insurance as defined by Article 5.53.

Revised Law

Sec. 461.002. DISCLOSURE OF GUARANTY FUND NONPARTICIPATION. (a) Each insurance policy, contract, certificate, evidence of coverage, or application subject to this chapter must include a statement that, if the insurer is unable to fulfill the insurer's contractual obligation under the policy, contract, certificate, or evidence of coverage, the insurer is not covered by an insurance guaranty fund or other solvency protection arrangement.

(b) The statement must be in 10-point type and affixed to the first page of the insurance policy, contract, certificate, evidence of coverage, or application. (V.T.I.C. Art. 21.28-E, Sec. (a) (part).)

Source Law

Art. 21.28-E. (a) [Each insurance policy or contract or application or certificate or evidence of coverage . . . delivered or issued for delivery in this state that is not covered by an insurance guaranty fund or other solvency protection arrangement authorized by this code] must have affixed to the first page in 10-point type a statement to the effect that, in the event the insurer is unable to fulfill its

contractual obligation under this policy or contract or the certificate or evidence of coverage, the insurer is not covered by an insurance guaranty fund or other solvency protection arrangement.

Revised Law

Sec. 461.003. FORM OF STATEMENT; PROHIBITION. (a) The commissioner by rule shall promulgate the statement that an insurer must use to comply with this chapter.

(b) An insurer may not include in an insurance policy, contract, certificate, evidence of coverage, or application a statement that does not conform to the appropriate statement prescribed by the commissioner. (V.T.I.C. Art. 21.28-E, Sec. (b).)

Source Law

(b) The State Board of Insurance by rule shall promulgate the statements that must be used by insurers to comply with this article, and an insurer may not include in an insurance policy, contract, or application or a certificate or evidence of coverage a statement that does not conform to the appropriate statement promulgated by the board.

Revisor's Note

Section (b), V.T.I.C. Article 21.28-E, refers to the "State Board of Insurance" and the "board." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Accordingly, the revised law substitutes a reference to the commissioner for references to the State Board of Insurance.

CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

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